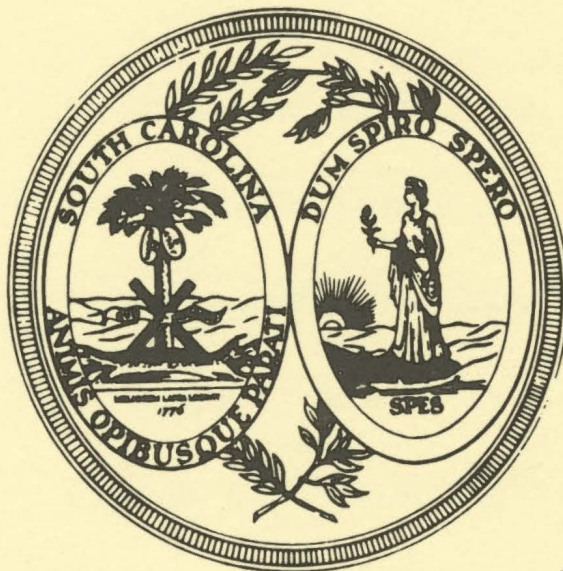


A3Au255
8.F85

South Carolina General Assembly



S. C. STATE LIBRARY

SEP 1 1983

Legislative Audit Council

STATE DOCUMENTS



The State of South Carolina
General Assembly
Legislative Audit Council
Sunset Review of:
Board of Funeral Service
Board of Examiners for Registered
Sanitarians
Board of Social Worker Registration
Dairy Commission
State Cemetery Board
Building Code Council
Board for Barrier Free Design
August 31, 1983

THE STATE OF SOUTH CAROLINA

GENERAL ASSEMBLY

LEGISLATIVE AUDIT COUNCIL

SUNSET REVIEW OF:

BOARD OF FUNERAL SERVICE

BOARD OF EXAMINERS FOR REGISTERED SANITARIANS

BOARD OF SOCIAL WORKER REGISTRATION

DAIRY COMMISSION

STATE CEMETERY BOARD

BUILDING CODE COUNCIL

BOARD FOR BARRIER FREE DESIGN

TABLE OF CONTENTS

	<u>Page</u>
<u>REPORT INTRODUCTION</u>	1
<u>BOARD OF FUNERAL SERVICE</u>	4
<u>BOARD OF EXAMINERS FOR REGISTERED SANITARIANS</u> .	46
<u>BOARD OF SOCIAL WORKER REGISTRATION</u>	69
<u>DAIRY COMMISSION</u>	91
<u>STATE CEMETERY BOARD</u>	135
<u>BUILDING CODE COUNCIL</u>	160
<u>BOARD FOR BARRIER FREE DESIGN</u>	177

REPORT INTRODUCTION

In July 1978, the General Assembly passed Act 608, the Sunset Act. This Act abolishes specific boards and commissions on predetermined dates unless the agency demonstrates a public need to justify its continued existence. In passing the Law, the Legislature's greatest concern was whether the regulation provided by these agencies was needed to protect the public interest and, if so, how well the agencies were performing this function. This report contains the reviews of seven boards scheduled to terminate on June 30, 1984:

Board of Funeral Service
Board of Examiners for Registered Sanitarians
Board of Social Worker Registration
Dairy Commission
State Cemetery Board
Building Code Council
Board for Barrier Free Design

The Sunset Law made the Legislative Audit Council responsible for evaluating the performance of these agencies scheduled for termination. A systematic review is provided by the Act so that the Legislature might be in a, "better position to evaluate the need for their continuation, reorganization or termination." The Act requires that the Audit Council, as a minimum, address the following eight issues:

- (1) The amount of the increase or reduction of costs of goods and services caused by the administering of the programs or functions of the agency under review;
- (2) Economic, fiscal and other impacts that would occur in the absence of the administering of the programs or functions of the agency under review;
- (3) The overall cost, including manpower, of the agency under review;
- (4) The efficiency of the administration of the programs or functions of the agency under review;

- (5) The extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates;
- (6) The extent to which the agency duplicates the services, functions and programs administered by any other State, Federal or other agency or entity;
- (7) The efficiency with which formal public complaints filed with the agency concerning persons or industries subject to regulation and administration of the agency under review have been processed; and,
- (8) The extent to which the agency under review has complied with all applicable State, Federal and local statutes.

This criteria provided guidelines and measures by which an agency's performance can be judged. In its review, the Audit Council studied the fiscal and management practices of each board. All policies and procedures promulgated and followed by the Boards and all applicable State regulations were reviewed. Files, memos, minutes of meetings and records were examined and complaints and examination data analyzed. In addition, the Audit Council surveyed Board members and interested industry associations and interviewed the Boards' staffs.

The review of the regulatory duties, functions, policies and procedures of the Board for Funeral Service and the Dairy Commission indicates that these two Boards fulfill a public need through the regulation of their industries. The Audit Council recommends that the authorities of each of these Boards be continued.

The Legislative Audit Council has determined that the Boards of Examiners for Registered Sanitarians, Social Worker Registration, the State Cemetery Board, Building Code Council and the Board for Barrier Free Design should be terminated as provided by Act 608. Each of these Boards, as independent regulatory boards, do not meet the criteria set out in the Sunset Act to justify continued existence.

This report is the first step in the Sunset process. Each agency was invited to respond in writing to its audit report and their comments follow the report. In addition, each agency is given the opportunity to testify before the State Reorganization Commission and, after the start of the 1984 session, additional public hearings will be held to consider further testimony. Following this process, the General Assembly will decide whether to reestablish or terminate these agencies.

BOARD OF FUNERAL SERVICE

TABLE OF CONTENTS

	<u>Page</u>
<u>INTRODUCTION</u>	7
<u>BACKGROUND AND HISTORY</u>	8
<u>SUNSET QUESTIONS AND FINDINGS</u>	10
(1) ECONOMIC IMPACT	10
New Legislation is Too Restrictive	11
Required Parking Spaces is an Unnecessary Restriction	12
Licensure of Crematories is Questionable	13
(2) TERMINATION OF AGENCY	15
(3) ADMINISTRATIVE COSTS	16
(4) ADMINISTRATIVE EFFICIENCY	17
The Board Lacks Specifics Concerning Its Inspection Program	17
Consistent Exam Standards Are Needed	18
Oral Examination is Subjective	19
Funeral Directors are not Required to Know Embalming or Public Health	21
Education Requirements for Funeral Directors are Unspecific	23
(5) PUBLIC PARTICIPATION	26
Funeral Board is Too Large	26
Board's Accessibility to the Public	28
(6) DUPLICATION OF SERVICES	31
(7) HANDLING OF COMPLAINTS	31
No System for Handling Complaints	32
(8) COMPLIANCE WITH THE LAW	33
Funeral Directors Serve as Coroners	33

TABLE OF CONTENTS (CONTINUED)

	<u>Page</u>
<u>APPENDICES</u>	35
1 - Statement of Revenues and Expenditures	36
2 - Board's Comments	37

INTRODUCTION

After reviewing the operations and laws of the Board of Funeral Service, the Audit Council concludes that regulation of the funeral industry should continue. However, substantial changes to the Board's operations, procedures and laws should be made. The Board fulfills licensing and inspecting functions which cannot be accomplished through existing governmental or private organizations.

BACKGROUND AND HISTORY

Regulation of the funeral industry began in South Carolina in 1900 when the General Assembly passed Act 224. This legislation directed the State Board of Health to license individuals as embalmers. It was in response to the Legislature's forbidding the transportation of dead human beings within or outside of the State whose death was the result of any contagious or infectious disease. The State Board of Health was directed to enact regulations governing the disposition and shipping of dead people and to license persons qualified to prepare such people for transportation.

In 1912 the General Assembly enacted Act 426 which created a separate, five member State Board of Embalmers. This board became responsible for examining and licensing persons qualified to practice embalming. The Act did not apply to persons, "engaged simply in the furnishing of burial receptacles for the dead, and burying the dead, who do not practice embalming."

Act 426 was rescinded in 1955 and replaced with Act 272 which expanded regulation of the funeral industry to include the examining and licensing of funeral directors. A seven-member State Board of Funeral Service was created consisting of three licensed embalmers and four licensed funeral directors elected from each of the State's six congressional districts and one at large. The primary purpose for establishing a Board and including funeral directors in the regulation of the funeral industry was stated in the preamble of Act 272. It said:

...the necessity for such a system of regulation is due to the fact that the public health and safety is endangered, through the spread of contagious, communicable and infectious diseases, by the improper or untrained handling of dead human bodies; and

...unscrupulous and unqualified funeral directors are afforded an opportunity of preying financially upon bereaved persons and practicing frauds upon them; and

...other abuses in these professions, such as improper advertising, unethical procurement of business, the giving of rebates, etc., are dangerous to the public well-being; and

...the improper disposition of dead human bodies may tend to permit major crimes to go undetected; and

...the public welfare and tranquility are furthered by the dignified and kindly directing of funerals which can only be accomplished by trained and experienced persons.

In addition, for the first time the Board was given the power of employing inspectors to administer its laws.

In 1965 the Board was expanded to eight members and in 1971 the current nine member board was established. Six of the members are nominated by the South Carolina Funeral Directors Association to serve in the State's six congressional districts. Three at large members are nominated by the South Carolina Morticians Association. Members of the Board need not be members of either association and the Governor has the power to appoint or remove an individual from office.

Persons appointed to the Board must be licensed as a funeral director and embalmer and have five years continuous experience in each profession within the State. Board members serve one term and cannot be reappointed within three years from the date they completed their last service. The primary purpose of the Board is to examine and qualify individuals to serve as embalmers and funeral directors. It also hires inspectors to inspect funeral establishments and to enforce the Board's regulations.

SUNSET QUESTIONS AND FINDINGS

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Board is primarily responsible for licensing funeral directors and embalmers and inspecting funeral facilities. It does not regulate prices charged for funeral services however, the Board does have an indirect impact on consumer costs. By setting apprenticeship standards (see p. 11) requiring a certain number of parking spaces (see p. 12) for a funeral home or licensing crematories (see p. 13), the Board has a fiscal impact on the trade. These actions restrict who can provide a service to the public and may have an impact on the cost of services available.

Protecting the public from, "unscrupulous and unqualified funeral directors" was the legislative intent for establishing a funeral service board. However, no consumer protection exists in the Board's current laws or its rules and regulations. Funeral directors have not had to tell customers that State Law does not require embalming, nor have they been required to give their customers an itemized list of costs and services. However, in the 1983 legislative session, the General Assembly enacted legislation requiring funeral directors to give a customer an itemized list of services and to disclose all factual information. The new law takes effect January 1, 1984. Although a direct cost figure cannot be

determined for the economic effect the Board has on the industry, the following findings demonstrate its indirect impact on consumer costs.

New Legislation is Too Restrictive

Recently enacted legislation to increase the number of funerals and embalmings apprentices must assist to become licensed is too restrictive. The new law, which takes effect January 1, 1984, will require apprentice embalmers and funeral directors to assist in 50 embalmings or funerals to become licensed.

Currently, Section 40-19-20 of the 1976 South Carolina Code of Laws requires funeral directors to serve one year as an apprentice to a licensed funeral director and embalmers, a two-year apprenticeship to a licensed embalmer. This statute also requires a funeral home where apprentices serve to have a minimum of 25 funerals per calendar year. The new legislation stipulates that apprentices directly assist in 50 funerals or embalmings. Thus, the new legislation will place the minimum restriction on an apprentice rather than the funeral home. While this makes an apprentice directly accountable for his training, the minimum number required is too high.

A Council survey of the southeastern states (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, and Virginia) found that Alabama, Florida, Kentucky, Mississippi and Virginia have no minimum requirement for funerals or embalmings. Louisiana, North Carolina and Tennessee require 25 while only Georgia requires 50.

In 1978, the South Carolina Supreme Court ruled against the Funeral Board concerning apprentices. The Board had required that funeral director apprentices participate in at least 60 funerals. The Court found this to be contrary to state statute and, therefore, unreasonable.

Requiring that apprentices participate in 50 funerals or embalmings places too great a restriction on potential candidates for licensure. There is no demonstrated need to the public that apprentices participating in this many funerals or embalmings will contribute to its safety or benefit.

Requiring Parking Spaces is an Unnecessary Restriction

Funeral homes are required to operate under an unnecessary parking space requirement. Homes must have off-street parking for ten automobiles even though there is no demonstrated need for such a requirement. Section 40-19-260 of the 1976 South Carolina Code of Laws stipulates that funeral homes licensed after May 13, 1971 must have ten parking spaces. Beginning January 1, 1984, newly enacted legislation will increase this number to 12. A review of legislation and rules and regulations governing funeral directors and embalmers in the southeast showed that these states do not regulate such a capital investment as parking spaces.

The legislative intent for establishing a Board of Funeral Service was to protect the public's health and welfare. However, there is no demonstrated need that requiring ten parking spaces protects the public's health or a customer's welfare. Parking space is a matter handled by city or county zoning requirements as part of the business licensing process.

The parking space requirement restricts entry into the funeral home business to those who have sufficient capital to buy or build a parking lot. Also, it is a State intrusion into some local government's zoning regulations. The legislation does not protect public health and it impacts on consumer costs through the increased capital investment needed by a prospective funeral home owner.

Licensure of Crematories is Questionable

The Board is licensing crematories when the need to do so is questionable. Newly enacted legislation which will take effect January 1, 1984, requires crematories in the State be licensed by the Board and operated by a licensed funeral director. There are five crematories in South Carolina.

The Board's current legislation is unclear as to its authority to regulate crematories. In addition, the State Attorney General has issued conflicting opinions on this subject. In January 1976, the State Attorney General issued an opinion stating that "...a crematory which limits its operations to reducing dead human bodies to ashes by means of fire is not subject to licensing by the State Board of Funeral Service." However, in April 1979 the Attorney General's Office issued another opinion stating that the Board did have the authority to license crematories.

An Audit Council survey of the nine other southeastern states (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee and Virginia) determined that only Tennessee regulates crematories through its Board of Funeral Directors and Embalmers. Florida requires registration with its Department of Professional Regulation and issues a direct disposal permit. The remaining seven states do not regulate crematories.

Section 17-5-310 of the 1976 South Carolina Code of Laws regulates cremations under the State's Codes for criminal procedures. The Section states:

When the body of any dead person who died in the county is to be cremated, whoever required the cremation shall secure a permit for such cremation from the county medical examiner or his deputy, and any such person who shall willfully fail to secure such permit for cremation shall be fined not less than twenty dollars nor more than five hundred dollars. Such permit for cremation shall be promptly acted upon by the county medical examiner or his deputy.

By regulating crematories, the Board is expanding its authority. Requiring licensed funeral directors to operate crematories restricts entry into the trade. There is no demonstrated need that crematories should be regulated by the Board or operated by a licensed funeral director.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER
LEGISLATION KEEPING APPRENTICESHIP STANDARDS FOR FUNERAL DIRECTORS AND EMBALMERS
AT ITS CURRENT LEVEL.

THE GENERAL ASSEMBLY SHOULD CONSIDER
REPEALING SECTION 40-19-260 OF THE 1976
SOUTH CAROLINA CODE OF LAWS CONCERNING
PARKING SPACES.

THE GENERAL ASSEMBLY SHOULD CONSIDER
REMOVING CREMATORIES FROM THE JURISDICTION OF THE STATE BOARD OF FUNERAL SERVICE.

(2) WHAT ECONOMIC, FISCAL AND OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW?

The original purpose for licensing embalmers has changed since 1900. People died more often from infectious or contagious diseases then, so the State enacted laws governing the preparation and embalming of dead persons for transportation. Since then medical and public health advances have done much to accomplish the original purpose for licensing embalmers. Today, the public health purposes for embalming have given way to cosmetic reasons as the medical need to embalm a dead person has waned.

An Audit Council review of medical pathologists in South Carolina and with the National Center for Disease Control in Atlanta, found that the need for embalming to protect the public's health is questionable. The only danger noted by these professionals was the possibility that an embalmer may come into contact with someone who died from an infectious or contagious disease. Embalming is not mandatory in South Carolina and the only legal requirement for burial is that a death certificate be filed with a county registrar.

The role of funeral directors in protecting public health is also unclear. They do not directly prevent the spread of disease and are not examined on their knowledge of embalming or public health (see p. 21). As noted, there are no State laws or rules and regulations requiring a citizen to hire a funeral director or to purchase any of his services in case of a death.

However, the legislative intent for including funeral directors in a Board of Funeral Service was to protect the public from, "unscrupulous and unqualified funeral directors (who) are afforded an opportunity of preying financially upon bereaved persons and practicing frauds upon them." This legislation expanded the Board's responsibility from protecting the public's health to guarding its fiscal interest and welfare. Holding practitioners accountable for their actions is one of the primary purposes of licensing. The threat of losing a license to work is a considerable incentive for a practitioner to deal fairly with the public. Accordingly, through licensure the Board has recourse against improper or illegal practitioners.

In the absence of a Board, the State would have to undertake a program of sanitary inspections and examinations of embalmers. This would assure the public that health standards are being met and would protect embalmers from the possibility of contracting a disease while practicing their trade. A mechanism for handling consumer complaints and protecting the public from "unscrupulous" funeral directors would also be needed. Terminating the Board would open the trade to anyone who wished to enter, however, it would also increase the potential for abuse without a means to correct it.

- (3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

The total operating budget of the Board of Funeral Service is derived from license and examination fees (see Appendix 1). From FY 78-79 to FY 82-83, the Board's expenditures increased from \$41,004 to \$52,294 while revenues increased from \$41,080 to an estimated \$58,000. The Board employs a part-time executive secretary and a full-time inspector whose salaries and benefits consumed 45% or \$23,145 of its total expenditures in FY 81-82. Per diem expenditures for Board members totaled \$2,870 and travel expenses were \$13,144 in FY 81-82. A review of salary, per diem and travel expenses found that the Board is in compliance with the State's policies and procedures.

(4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Council found the Board to have problems in several areas of regulation, licensure and the handling of day-to-day activities. These problems are discussed in more detail below.

The Board Lacks Specifics Concerning Its Inspection Program

Rules and regulations enacted by the Board establishing standards for sanitary conditions are not specific. In addition, the Board has failed to enact any rules or regulations regarding its inspector's duties or what he should report.

Section 40-19-90 of the 1976 South Carolina Code of Laws gives the Board the "duty to prescribe rules and regulations... governing the standards of sanitation to be observed in the embalming and care of

dead human bodies." Section 40-19-70 states the Board should employ inspectors as is necessary and that their duties should be prescribed. These statutes give no details as to specific duties or what should be reported to the Board.

The inspection form used by the Board contains no specifications. The form is vague as there is no specific place to record a problem, what is needed to correct it and date for a follow-up inspection.

The states of Florida and Georgia have regulations which provide detailed inspection criteria, stating what an embalming room needs to meet sanitary conditions, as well as the necessary tools. The rules further specify a required number of caskets to be displayed, seating for services, and details for price disclosure.

Since there are no specific criteria for sanitation, inspection requirements are subjective and inconsistent. Specific standards would give the Board a measureable form to enforce its authority, protect the public and aid in documentation for hearings.

Consistent Exam Standards Are Needed

The Board has not followed accepted testing procedures which ensure that grades are comparable and objective from year to year. Section 40-19-90 of the 1976 South Carolina Code of Laws grants the Board the power to prescribe rules and regulations for the conduct of examinations. However, the Board has failed to enact any rules or regulations prescribing standards for the passing of the written State Board Exam.

The Board uses a standardized examination, one for funeral directors and one for embalmers. These are prepared and graded by the National

Conference of Funeral Service Examining Board. Once final grades are received from the Conference, the Board then establishes a passing grade for the candidates. In 1980 and 1981 the passing grade was set at 70 for funeral directors and embalmers. In 1982 the funeral directors passing grade was 70 but the embalmers grade was lowered to 66. After the score was lowered, nine of 12 candidates passed the examination. In 1981, only four of 13 applicants passed when the grade was set at 70.

The National Conference Board recommends that candidates for either license take both the funeral director's and embalmer's tests. An overall grade of 75 and at least 70 on both examinations is also recommended by the Conference. An Audit Council's survey of the nine other southeastern states determined that seven states (Florida, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, and Virginia), either by statute or regulation, specify a passing grade of between 70% and 75%.

Currently, applicants are not assured that they will be measured by standard criteria. This practice makes it difficult for the Board to be objective in applying licensure standards.

Oral Examination is Subjective

The oral examination required for licensure by the Board is subjective. The President of the Board of Funeral Service, stated the oral examination serves a dual purpose of an exam and an interview. Section 40-19-90 of the 1976 South Carolina Code of Laws states "The Board shall specifically have the power to fix and prescribe rules and regulations as to the procedure to be followed... in the conduct of examinations."

Sections 40-19-160 and 40-19-170 further state in order to be a licensed funeral director and/or embalmer an applicant must pass to the satisfaction of the Board a prescribed examination. However, the Board has not enacted any rules or regulations establishing oral examination criteria.

In March 1983, the Board adopted a set of oral exam questions and a policy regarding the administration of the exam and recording of the grade. When administering the exam, Board members are to ask ten questions chosen from the 17 available for a funeral director and 15 for an embalmer. One intent of the Board's oral exam is to test the applicant's knowledge of State Laws, however, only eight of the 17 (47%) and four of the 15 (27%) of the funeral director's and embalmer's questions, respectively, are applicable to State laws. The remaining questions pertain to the applicant's general knowledge of his intended profession. Because there are so few questions on South Carolina law, there is a possibility that the oral exam for an embalmer would not address State laws at all. The policy for recording the oral exam grade includes a list of the number of the questions asked and the percentage answered correctly along with the numerical grade and the names of the Board members who administered the exam.

An Audit Council's survey of the nine other southeastern states determined that Alabama, Florida, Louisiana, Mississippi, North Carolina, and Tennessee require no oral examination for licensure. Georgia is the only state which requires passage of an oral exam for licensure, and Virginia reserves the right to give an oral examination, which can have a value of no more than 10% towards licensure. Kentucky only requires embalmers to take an oral exam if they have passed the National Conference Exam in lieu of the state examination. The National Conference

Exam is used by all but two states as the required written exam. Mississippi will accept passage of the National Conference Exam in lieu of their own state exam and Louisiana is required by law to administer a state exam. An embalmer or funeral director from another state may apply for a license in South Carolina once he has established residence. If the out-of-state license was granted under "similar requirements" to South Carolina's, the Board can grant a license to practice.

A random survey of 40 funeral homes in South Carolina, conducted by the Audit Council found that 21 of 26 (81%) of the respondents felt the National Conference Exam was a good to excellent test of the required knowledge necessary to perform their jobs. The National Conference Committee can modify the State Board Examination to include testing of State laws and regulations, or the National Board Examination and a test of applicable State laws can be administered in South Carolina by the Committee. The oral exam as currently administered by the Board is subjective because it does not sufficiently address State laws and regulations and also serves as an interview.

Funeral Directors Are Not Required to Know Embalming or Public Health

Funeral directors licensed in South Carolina are not required to be knowledgeable in the trade of embalming or the necessary safeguards against contagious and infectious diseases. The written examination for funeral directors does not test a director on the different areas of funeral service science, such as: embalming, microbiology, pathology, anatomy, chemistry, and restorative art. Although the potential for harm to the public is slight, there is still a chance that an embalmer may come into contact with someone who died from a contagious disease.

Since funeral directors hire and supervise embalmers, they should be knowledgeable about infectious diseases and public health.

To serve as a member on the Board, Section 40-19-30 of the 1976 South Carolina Code of Laws requires a person to be licensed as both a funeral director and an embalmer. However, the qualifications to be a licensed funeral director as specified in Section 40-19-160 do not include any educational requirements on embalming or contagious and infectious diseases. Instead, a funeral director candidate is examined on such topics as sociology of funeral service, psychology and counseling, funeral merchandising, funeral service laws, business law, funeral directing and professional relationships, and accounting.

An Audit Council survey of the southeastern states determined that eight states require funeral directors to be knowledgeable in embalming and contagious and infectious diseases. Mississippi does not license funeral directors. Virginia requires a dual license and successful completion of mortuary school. Georgia also requires its funeral directors to be licensed embalmers, and Florida requires funeral directors to have an Associate's Degree in Mortuary Science. Alabama, Kentucky, Louisiana, North Carolina and Tennessee require testing in all or some of the following to be licensed as a funeral director: microbiology, hygiene (sanitation and disinfection), public health rules and regulations, state laws concerning transportation of bodies with infectious or contagious diseases, and laws or rules and regulations pertaining to sanitary conditions.

Due to inadequate licensure requirements a South Carolina funeral director is not required to be knowledgeable of the dangers to the public's health and/or his embalmer. This occurs because funeral

directors are not required to have proficient knowledge in the art of embalming or health rules and regulations.

Education Requirements For Funeral Directors Are Unspecific

The education requirements for licensing funeral directors are unspecific and vague. Funeral director candidates are required to have one year of college education, however, no course curriculum is specified.

Sections 40-19-160 and 40-19-170 of the 1976 South Carolina Code of Laws specify the qualifications to be a licensed funeral director and embalmer. The qualifications are alike with two exceptions. First, a funeral director must have served a 12-month apprenticeship under a licensed funeral director, while an embalmer must have served for 24 months under a licensed embalmer. Secondly, the education requirements differ. A funeral director must have successfully completed one year at an accredited academic college or mortuary college, however, the college curriculum is not specified. An embalmer must have successfully completed a regular course of not less than one year in an embalming college accredited by the Board. Both funeral directors and embalmers must be 21 years of age; be of good moral character as witnessed by two affidavits; have a high school education or not less than 16 Carnegie units or the equivalent; and must pass a prescribed examination to the satisfaction of the Board. However, newly enacted legislation to take effect January 1, 1984 will lower the age requirement to 18.

An Audit Council survey of the nine other southeastern states found the education qualifications to be a licensed funeral director varies among the nine states. Alabama and Kentucky have no college education requirements to be licensed. Tennessee grants the applicant

a choice, in that he may either complete a course of study in a school for funeral directors approved by the Board and serve a one year apprenticeship or he may serve a two year apprenticeship with no required college. Louisiana requires 30 semester hours or its equivalent in an accredited college or university. North Carolina requires either 32 semester hours or 48 quarter hours in an accredited college or graduation from an approved mortuary science college. In order to be a funeral director in Florida and Georgia the applicant must first be qualified as an embalmer. Mississippi does not license funeral directors and Virginia has a dual license.

Since a course curriculum is not specified, requiring college courses for a funeral director does not protect the public. There is no demonstrated need that the public health or welfare is protected by having a college requirement for a funeral director.

RECOMMENDATIONS

THE STATE BOARD OF FUNERAL SERVICE SHOULD ENACT SPECIFIC RULES GOVERNING THE INSPECTOR'S DUTIES AND SANITARY CONDITIONS FOR FUNERAL ESTABLISHMENTS.

THE BOARD SHOULD DEVISE A MORE DETAILED INSPECTION REPORT TO INCLUDE A PLACE FOR THE ACTION NEEDED, THE DATE THE PROBLEM SHOULD BE CORRECTED, ACTUAL DATE OF A FOLLOW-UP INSPECTION AND THE LICENSED DIRECTOR'S SIGNATURE.

THE BOARD SHOULD ENACT RULES AND REGULATIONS GOVERNING THE PASSING CRITERIA FOR EXAMINATIONS. IT SHOULD SET A MINIMUM PASSING SCORE FOR BOTH EXAMINATIONS.

THE STATE BOARD OF FUNERAL SERVICE SHOULD CONSIDER WORKING WITH THE NATIONAL CONFERENCE COMMITTEE TO CHOOSE THE BEST ALTERNATIVE FOR SOUTH CAROLINA TO TEST THE APPLICANT'S KNOWLEDGE OF STATE LAWS.

THE BOARD SHOULD PRESCRIBE RULES AND REGULATIONS GOVERNING THE PROCEDURES FOR CONDUCTING EXAMINATIONS.

THE BOARD SHOULD NOT REQUIRE AN INTERVIEW FOR LICENSURE.

THE GENERAL ASSEMBLY SHOULD CONSIDER AMENDING SECTION 40-19-160(5) OF THE 1976 SOUTH CAROLINA CODE OF LAWS TO DIRECT THE BOARD OF FUNERAL SERVICE TO SET A SPECIFIC COLLEGE CURRICULUM FOR FUNERAL DIRECTORS.

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

While the Board maintains an active relationship with the South Carolina Funeral Directors and Morticians Associations, it has not encouraged the participation of the public. The Board is too large, has no consumer members and is not readily accessible to the public. These problems are explained in the following findings.

Funeral Board is Too Large

South Carolina has the largest governing commission of any of the funeral service boards in the Southeast. The State has a nine-member board plus two staff members which in FY 81-82 spent \$16,014 (31%) of its total expenditures on per diem and travel.

Section 40-19-30 of the 1976 South Carolina Code of Laws establishes a nine-member board. It consists of a representative from each of the State's six congressional districts and three representatives from the State at large. Six members are nominated by the South Carolina Funeral Directors Association and three are nominated by the South Carolina Morticians Association. All nine are appointed by the Governor and must be currently licensed as a funeral director and embalmer with five years continuous service in the state.

An Audit Council survey of the nine other southeastern states (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee and Virginia) determined the average size of a

board is six members with the largest being seven. In addition, the Council found that six of the states have one or two public members, the average being one. Only Alabama, Louisiana and Mississippi do not have public representation on their boards. Mississippi in a newly passed law effective July 1, 1984, has succeeded in having two public members included in their Board. Louisiana has made two attempts to have a public member added to their State Board of Embalmers and Funeral Directors. The following table shows a comparison of southeastern states funeral boards.

TABLE 1
COMPARISON OF THE SOUTHEASTERN STATES'
BOARDS OF FUNERAL SERVICE

<u>State</u>	<u>Name of Board</u>	<u>Approximate No. of Licensed Homes</u>	<u>Board Size</u>
Alabama	Board of Funeral Service	310	7
Georgia	Board of Funeral Service	650	6
Florida	Board of Funeral Directors and Embalmers	675	7
Kentucky	Board of Embalmers and Funeral Directors	485	5
Louisiana	Board of Embalmers and Funeral Directors	400	7
Mississippi	Board of Embalming	not licensed	7
North Carolina	Board of Mortuary Science	644	7
South Carolina	Board of Funeral Service	406	9
Tennessee	Board of Funeral Directors and Embalmers	563	5
Virginia	Board of Funeral Directors	460	7

From 1955, when it was established, until 1965, when it was increased to eight, the board operated with seven members. In 1971, its size was increased to nine members. Newly enacted legislation will add two public members, beginning January 1, 1984, increasing the board's size to eleven.

The addition of two new members could increase the cost for per diem and travel of the Board members by an estimated \$1,259. This cost is based on a board member's average expenses for per diem and travel during FY 81-82. This assumes a yearly average cost of \$629.33 for travel, meals, lodging and per diem for one member to attend nine meetings.

The board can achieve its objectives of having public representation and regulating the industry with fewer members. Section 40-19-30 of the 1976 South Carolina Code of Laws can be amended to reduce the board to its original size and make it comparable to the southeastern average. A smaller board would consume fewer funds which can be directed to serving the public or reducing its expenses.

Board's Accessibility to the Public

The Board of Funeral Service is not readily accessible to the public, nor have Board meetings been announced to the public. The Board's address and phone number could not be found in the State Telephone Directory, public telephone directories or through the South Carolina Program Assistant Line (PAL). Currently, to announce meetings the Board sends letters to the funeral establishments and the secretaries of the South Carolina Funeral Directors Association and the South Carolina Morticians Association.

Section 40-19-60 of the 1976 South Carolina Code of Laws requires the time and place of Board meetings to be announced to its members, interested parties, and the public in a manner prescribed in the rules and regulations of the Board. However, there are no rules or regulations regarding the notification of the Board meetings to the public.

In a survey sent to the Board members, the Council asked what steps had been taken to increase public awareness and participation of Board activities. The Council received four responses from the nine Board members which stated that the handling of consumer complaints increased public participation. However, the Board has encountered problems handling complaints (see p. 31). The Department of Consumer Affairs is aware of the Board of Funeral Service; however, there is no address or phone number listed with the Department to contact the Board.

The Board's function is the regulation of the funeral industry in the public's interest. Since the Board is not readily accessible, the public is not able to reach the Board to lodge a complaint or obtain information.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER
AMENDING SECTION 40-19-30 OF THE 1976 SOUTH
CAROLINA CODE OF LAWS TO REDUCE THE SIZE
OF THE BOARD OF FUNERAL SERVICE TO SEVEN
MEMBERS AND TO HAVE BOARD MEMBERS SELECTED
ON THE FOLLOWING BASIS.

- (a) THE BOARD SHOULD CONSIST OF SEVEN MEMBERS ONE FROM EACH OF THE SIX CONGRESSIONAL DISTRICTS AND ONE PUBLIC MEMBER FROM THE STATE AT LARGE.
- (b) THE GOVERNOR SHOULD APPOINT SOMEONE WITH NO VESTED INTEREST IN THE FUNERAL INDUSTRY AS THE AT LARGE PUBLIC MEMBER.
- (c) THE GENERAL ASSEMBLY SHOULD RETAIN LEGISLATION ALLOWING THE SOUTH CAROLINA FUNERAL DIRECTORS ASSOCIATION AND THE SOUTH CAROLINA MORTICIANS ASSOCIATION, ALONG WITH ANY LICENSED FUNERAL DIRECTOR OR EMBALMER TO NOMINATE A LICENSED INDIVIDUAL TO SERVE ON THE BOARD. ANY INDIVIDUAL OR GROUP SHOULD ALSO BE ALLOWED TO MAKE NOMINATIONS.

THE BOARD OF FUNERAL SERVICE SHOULD ADOPT RULES AND REGULATIONS GOVERNING THE ANNOUNCEMENT OF THE BOARD MEETINGS.

THE BOARD OF FUNERAL SERVICE SHOULD LIST ITS ADDRESS AND PHONE NUMBER IN THE PUBLIC TELEPHONE DIRECTORY, THE STATE TELEPHONE DIRECTORY, AND WITH THE SOUTH CAROLINA PROGRAM ASSISTANCE LINE (PAL).

THE BOARD OF FUNERAL SERVICE SHOULD PROVIDE
THE DEPARTMENT OF CONSUMER AFFAIRS WITH
AN ADDRESS AND PHONE NUMBER.

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES
THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY
ANY OTHER STATE, FEDERAL OR OTHER AGENCY OR ENTITY.

The Board does not duplicate the functions or services administered by any other state, federal or other agency. The Board works closely with the State Department of Health and Environmental Control (DHEC) concerning the filing of death certificates and other matters.

- (7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATIONS AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

The Council examined the Board's minutes, correspondence and complaint files, and found problems with the handling of complaints. The Board has no central file or log to record complaints. A more complete explanation is given in the following finding.

No System for Handling Complaints

The Board does not have a comprehensive system for recording and handling complaints. Examining the Board's minutes and correspondence files, the Council identified 23 possible complaints lodged between January 1980 and January 1983. For all complaints one or more of the following could not be determined: (1) the nature of the complaint, (2) the complainant, and (3) the Board's final action.

There are two reasons for the Board's problems with complaint handling: (1) there are no written procedures or policies developed to process complaints, and (2) the Board does not keep a log or have a central record keeping system for complaints. In addition, the Board is not readily accessible to the public (see p. 28).

When complaints are received by the Board they are not logged or filed in a central location. Instead, the Executive Secretary will answer an inquiry and file a copy in an individual folder. At its next meeting the Board may discuss the matter to determine if and what action to take.

Section 40-19-190 of the 1976 South Carolina Code of Laws gives the Board authority to revoke or suspend a license and Section 40-19-200 grants the power to investigate. Section 40-19-200 states that if it believes that someone has become unfit to practice or has violated its laws the Board's duty is, "...to conduct an investigation."

However, if there are no procedures and policies for handling complaints, the Board's investigative abilities are limited. They are further constricted when access by the public is limited. When the nature of a complaint cannot be determined, the Board is not assured of the industry's compliance with State laws. In addition, the Board is deprived of a primary means to evaluate services received by the public.

RECOMMENDATION

THE BOARD SHOULD DEVELOP FORMAL WRITTEN PROCEDURES TO HANDLE COMPLAINTS. THESE PROCEDURES SHOULD INCLUDE A STANDARD COMPLAINT FORM AND A COMPLAINT LOG TO RECORD AND TRACK PROBLEMS CONFRONTING THE BOARD. AREAS THAT SHOULD BE ADDRESSED IN THE LOG ARE COMPLAINANT; NATURE OF COMPLAINT; DATE OF COMPLAINT AND MEANS OF CONTACT; ACTION BY THE BOARD, AND; FOLLOW-UP. COMPLAINT PROCEDURES SHOULD BE INCLUDED IN THE BOARD'S INTERNAL OPERATING PROCEDURES.

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

An examination of its operations showed that the Board has a problem with Funeral Directors serving as Coroners. An explanation of this problem is given below.

Funeral Directors Serve as Coroners

Currently 16 of the State's 46 (35%) coroners and two of its six deputy coroners are licensed funeral directors. This presents the

potential for a conflict of interest. There is no State law which specifically prohibits a licensed funeral director serving as a coroner and the Board has no rules or regulations regarding this practice. In an opinion dated January 1981, the Attorney General's Office stated, "while it is not illegal for a coroner to work for a funeral home in the county in which he holds office, such a practice would have the appearance of impropriety and should be avoided."

Section 40-19-90 of the 1976 South Carolina Code of Laws gives the Board the power and assigns it the duty to "prescribe rules and regulations governing... practices of those engaged in and who may engage in embalming and funeral directing in this State." Under Sections 40-19-190 (3)(d) and (e) the Board is also authorized to refuse, revoke, or suspend the license of a funeral director or embalmer for employment of persons known as "steerers" or "solicitors" who obtain business and for use of one's influence for securing "dead human bodies," for a particular funeral director or embalmer. Although the Audit Council could find no recorded cases of a coroner using his office for financial gain, there exists a potential conflict of interest.

RECOMMENDATION

THE BOARD SHOULD ESTABLISH A POLICY CONCERNING THE CONDUCT OF FUNERAL DIRECTORS WHO SERVE AS CORONERS.

APPENDICES

APPENDIX 1

BOARD OF FUNERAL SERVICE

STATEMENT OF REVENUES AND EXPENDITURES

	<u>FY 78-79</u>	<u>FY 79-80</u>	<u>FY 80-81</u>	<u>FY 81-82</u>	<u>FY 82-83</u> (Estimated)
<u>Revenues</u>					
License Renewal Fees	\$25,030	\$29,635	\$32,000	\$32,640	\$37,000
Examination Fees	4,800	4,800	4,000	5,560	6,000
Apprenticeship Fees	2,240	2,240	1,500	2,590	3,000
Funeral Home Permits	8,100	8,100	7,600	11,310	12,000
Funeral Directors & Embalmers Permits	670	670	600	-	-
Miscellaneous	240	240	250	-	-
TOTAL	<u>\$41,080</u>	<u>\$45,685</u>	<u>\$45,950</u>	<u>\$52,100</u>	<u>\$58,000</u>
<u>Expenditures</u>					
Personal Services	\$18,616	\$20,247	\$21,851	\$23,145	\$24,530
Employee Benefits	-	-	-	-	157
Per Diem	3,535	2,205	2,660	2,870	2,895
Telephone & Telegraph	1,218	1,058	1,093	994	500
Other Contractual Svc.	951	-	-	-	-
Supplies	671	1,681	738	801	1,325
Postage	780	1,200	1,100	1,175	1,175
Dues	300	300	300	300	300
Travel	11,374	9,302	12,373	13,144	11,992
Other Fixed Expenses	448	-	-	-	-
Employer Contribution	3,165	3,396	3,755	4,262	4,793
Legal Services	-	327	-	170	170
Management Consultants	-	720	720	720	720
Non-State					
Employee Travel	-	157	439	448	448
Testing Service	-	4,533	565	2,505	2,550
Rental	-	232	346	616	552
Insurance -					
Non-State	-	88	88	88	88
Registration Fees	-	-	35	199	99
TOTAL	<u>\$41,004</u>	<u>\$45,446</u>	<u>\$46,063</u>	<u>\$51,437</u>	<u>\$52,294</u>
<u>State Appropriation</u>	<u>\$40,547</u>	<u>\$42,236</u>	<u>\$45,814</u>	<u>\$52,411</u>	<u>\$54,798</u>

Source: Budget and Control Board Budget Document and State Appropriation Act.

William E. Sandifer, III, President
Seneca

Jack M. Abbott
Greenville

William McCutchen
Winnsboro

Thomas M. McDaniel
Summerville

John S. Dunbar, III, Vice-President
Columbia

Jennings B. Johnson, Inspector
Lexington

Rudolph Tompkins, Assistant Inspector
Laurens

A. J. Grove, Jr., Secretary-Treasurer
Williston

Robert P. Johnson
Kingstree

Frank E. Teague
Laurens

W. Penn Troy
Mullins

SOUTH CAROLINA
State Board of Funeral Service

C. R. HINSHAW, JR., Executive Secretary
P. O. BOX 201

CLOVER, S. C. 29710

COMMENTS ON REPORT OF LEGISLATIVE AUDIT COUNCIL

Page 11, Para. 1, The new law requires that an apprentice funeral director participate in a minimum of 50 services and an apprentice embalmer assist in the preparation of at least 50 cases.

COMMENT: It has been repeatedly demonstrated in the funeral service field that "on the job training" is some of the best and most valuable training available to a prospective candidate for a license. Licensees who have experience in training apprentices concur that the requirement for 50 is minimal. The training that a potential licensee obtains in Mortuary Science College gives an excellent background for the work he will do. However, it gives little practical experience which is absolutely necessary to his ability to properly carry out his duties and responsibilities. In the case of a potential funeral director, this is the only true training which he receives.

Further comments and supporting documents may be added at the end of this report.

Page 11, Para. 2, The old law required that a Funeral Home handle a minimum of 25 cases per year in order to be qualified to train apprentices and placed no requirement on the apprentice for a number of cases.

COMMENT: This allows all funeral homes who have been issued a permit by the Board to be eligible to train apprentices. The old law was difficult to enforce because of the varying number of cases from one year to the next, particularly in the small volume firms. The old law had no requirement for the apprentice to report his work (training) to the Board. The new law requires that a report be made to the Board quarterly.

Page 11, Para. 3, State that the other Southeastern states do not require a particular number of cases or require a number smaller than 50.

COMMENT: The fact that other states have a different requirement than South Carolina does not of necessity make them right and us wrong. For example, in addition to the apprenticeship requirement in North Carolina, they have a requirement for annual Continuing Education which we do not have.

Page 12, Para. 1, States that the S. C. Supreme Court ruled in 1978 that requiring 60 cases was contrary to statute and unreasonable.

COMMENT: This ruling was brought about when the Board attempted to increase the time for apprenticeship from 12 to 24 months. This was in a Board Rule and was contrary to the 12 month requirement in the statute. In the same rule, the Board attempted to incorporate a 60 case requirement. The increase in time was challenged in court. Thus the ruling which is referenced. The ruling was not specifically targeted at the 60 case requirement.

Page 12, Para. 2, States that having the new statute will make entry into the profession more restrictive and will not contribute to the public safety and benefit.

COMMENT: The new law does not make entry more restrictive. It simply more clearly defines the requirements under the apprenticeship program. By doing so, it attempts to produce a high quality licensee who will have the necessary knowledge and ability to properly serve the public.

Page 13, Para. 1, States that the parking space requirement restricts entry into the profession to those with sufficient capital to build a parking lot, is intrusion into local government zoning regulations, does not protect public health and welfare, and impacts on consumer costs.

COMMENT: This does not restrict entry into the profession. The statute does not require a parking lot. It only requires space for off-street parking which is necessary for parking the vehicles of the funeral home as well as a very minimal number of additional vehicles. Since some funeral homes are built in areas without zoning, it makes a uniform requirement. In communities which do have zoning, if the funeral home issue is addressed and the zoning ordinance is more stringent than the state statute, the state statute will have no effect on the zoning ordinance. If a zoning ordinance does not address the funeral home issue, as regards parking, the state statute would apply as it would where no zoning ordinance exists. The requirement for off-street parking does protect the public health and welfare in that it helps to prevent traffic problems, pedestrian exposure to traffic, and access to the funeral home by handicapped patrons. The impact on consumer costs will be negligible because almost all funeral homes are built on sufficient land to meet the requirement.

Page 14, Recommendation #3 Recommends that crematories be removed from the jurisdiction of the Funeral Service Board and that the requirement that a licensed funeral director be removed.

COMMENT: The preamble to Section 1, Chapter 19 of Title 40 Code of Laws of South Carolina states in part "Whereas it is the obligation of the State to insure the fulfillment of this right by statutory control of the licensure and regulation of persons engaged in the service of final disposition;". Since the primary responsibility of the Board is the regulation of all institutions and personnel who handle final disposition, it stands to reason that the Board should also regulate crematories. Having a funeral director operate the crematory ~~is~~ /r

COMMENTS, PAGE 3

appears that by statute, an attempt is made to protect the public by having a qualified person as an operator. This also gives additional opportunity for censure in the event of wrong-doing because the individual's funeral director's license as well as the crematory permit is involved. In some states, particularly California and Florida, there have been a large number of problems with crematories. These problems seem to have partially stemmed from insufficient licensing and regulatory criteria.

Page, 18, Para. 2 & 3, states that additional inspection criteria is needed.

COMMENT: This is presently being addressed by the Board. A totally new inspection form is being developed to be used with the new statute, Rules, and Regulations.

Page 18, Para. 4, States that Sect. 40-19-90 grants the Board the power to prescribe rules and regulations for the conduct of examinations but the Board has failed to do so.

COMMENT: The Board has always had criteria established for the passing of examinations. However, the Board is presently drafting proposed rules and regulations to properly support the new statute.

Page 19, Para. 1, states that the Conference recommends that candidates for either license take the examination for both (funeral director and embalmer).

COMMENT: This recommendation has never been received by the Board. However, it does not appear practical since the embalmer's exam covers many scientific subjects which are taught in the Mortuary Colleges. The applicant for a funeral directors license may, or may not, have the educational background in these subjects, dependent upon whether or not he is a Mortuary College graduate. The Conference may be making such a recommendation based upon the fact that many states now have a single license. It combines the funeral director and embalmer licenses into a funeral service licensee. Under this concept, all applicants for license must have attended Mortuary College.

Page 19. Para. 2, states that applicants are not assured that they will be measured by a standard criteria.

COMMENT: The Board has always applied the same criteria to one candidate that it has to another. However, passing scores for the written exam have been different from year to year due to the fact that the difficulty of the exam has varied from year to year in the past. This is being corrected by the Conference.

Page 20, Para. 1., states that the oral examination is to test the applicants knowledge of state law.

COMMENT: The oral exam is a test of many subjects, including state law. It also gives the Board an indication of the applicant's ability to communicate knowledge to the consumer which that consumer has every right to expect a licensee to have.

Page 21, Para 1, state that the Oral exam is subjective.

COMMENT: Subjective type examinations are widely used, in many fields, to test a person's knowledge and ability to relate that knowledge. By having two members of the Board, selected at random, to conduct each oral exam, the candidate is assured of an impartial scoring.

Page 21, Para 2, States that funeral directors are not required to be knowledgeable regarding infectious and contagious diseases and other subjects applicable to embalmers.

COMMENT: The duties and responsibilities of funeral directors and embalmers is totally different. The embalmer's responsibilities include sanitation and disinfection. The educational background for this is obtained in Mortuary Science College. The funeral directors' duties and responsibilities are in the area of arranging and directing funerals and providing funeral service information to families. The educational requirements to be licensed as a funeral director do not include graduation from a Mortuary Science College. Each funeral home must have an embalmer on its staff. The embalmer is the person responsible for the areas addressed by the Council.

Page 23, Para. 1. States that the educational requirements (curriculum) for licensure as a funeral director is vague.

COMMENT: The Board will address the curriculum in the rules and regulations which support the statute. By so doing, the requirements may be updated periodically as the need arises without going through the entire legislative process. The Board, with the advice of educators, will be in the best position to establish curriculum which meets the needs of potential licensees.

Page 24, Para. 1, states that there is no demonstrated need that the public health or welfare is protected by the college requirement for a funeral director.

COMMENT: The welfare of the public is protected by this requirement. By having this requirement, the public is assured of having a more qualified "professional" funeral director who has the capability to more adequately respond to their needs. This assurance is certainly beneficial to each families' welfare. However, in order for this to be totally accurate, the Board will have to establish a curriculum requirement. The statement by the Council is somewhat contradictory of those made regarding the need for funeral directors to have a knowledge of sciences.

Page 25, Para. 4, states that the Board should not require an interview for licensure.

COMMENT: The interview referred to is the Oral Examination administered by the Board. The Board feels that by using a subjective type oral exam, it can give greater assurance to the public that the licensee is truly capable of responding to their needs and requests in a proper way, within the bounds of the statutes. Educators in the field of Mortuary Science concur in this opinion.

Page 29 & 30, Recommends changing the size and structure of the Board.

COMMENT: Presently, the Board functions extremely well without any bias. However, the Board does feel that the addition of two consumers will be an important addition. This is the only change which the Board can concur with. To change the structure of a Board which is already functioning well would seem to be asking for problems.

Page 31, Para. 1, states that the Board works closely with DHEC concerning filing death certificates.

COMMENT: This is true, but grossly incomplete. The Board works closely with DHEC in sanitation, environmental protection, water source protection, infectious disease control (through cadavers), policy making, and any other area which either the Board or DHEC feel would be helpful.

age 33 & 34, deals with funeral directors acting as Coroners

COMMENT: Coroners are Constitutional Officers elected by the people. The Council seems to indicate that funeral directors should be prevented from being elected to this office. To prevent a person from being elected to such an office simply because of his avocation is totally wrong. There is no record or indication that a funeral director-coroner is, or has been, guilty of misuse of his office in the manner indicated by the Council report. Actually, funeral directors are far more qualified to handle this office than most other business persons.

Page 34, Recommendation Board should establish policy concerning conduct of funeral directors serving as coroners.

COMMENT: The same policy covers funeral director - coroners as any other funeral director. The Council report notes that the Board does have recourse if a Coroner who is a licensee is guilty of breach of the statute.

COMMENT: The Board strongly recommends that no changes be made in the statute which was signed into law in 1983 until sufficient time has elapsed to truly determine whether changes are actually needed.

Respectfully submitted,

S. C. STATE BOARD OF FUNERAL SERVICE

BY:


William E. Sandifer, III, President

ENCLOSURES: 3

Gupton-Jones College of Funeral Service

W. H. Pierce, Chairman
Board of Trustees



Daniel E. Buchanan
President

280 Mt. Zion Road—Atlanta, Georgia 30354
Telephone (404) 761-3118

August 10, 1983

Mr. William E. Sandifer, III, President
South Carolina State Board of Funeral Service
P.O. Box 36
Seneca, South Carolina 29678

Dear Bill:

I enjoyed our telephone visit yesterday and knowing that all my fine friends in South Carolina are doing well. As we discussed, I want to address a few comments to the requirement of the South Carolina State Board of Funeral Service that each apprentice participate in the preparation of a minimum of fifty (50) human remains prior to being eligible for licensure. The real question is, "At what point does an individual possess adequate skills and knowledge to be totally competent and responsible for the embalming operation?" As you know, a student attending any mortuary college is taught primarily theory in those disciplines directly and indirectly related to funeral service. The theory is extremely important to the funeral service professional, but theory alone is inadequate as a base for licensure. As in the case of other professions involving licensure, it is only after the theory has been reinforced with actual hands on, practical experience does one become able to function independently in the preparation room. It is only after theory has been applied over and over, that the student will be totally armed with the competence required to be self sufficient. Case analysis tells us that each and every case is different, each one unique, with underlying similarities, in terms of embalming requirements relative to disinfection, preservation, and restoration.

It is my understanding that the real point of any state board of funeral service requiring x number of cases during an internship or apprenticeship is not to set an arbitrary number, but to require participation to the extent that a prospective licensee will be exposed to a sufficient number to assure experience with many different kinds of cases. To address my feelings directly, I feel that South Carolinas' requirement of participation in fifty (50) cases during apprenticeship is not only acceptable, but is an absolute minimum. As a funeral director, you realize that one must, on average, embalm many bodies over a period of time to have exposure to the jaundice case, decomposition cases, gun shot cases, auto accident victims, and the list goes on and on. It is my



Mr. William E. Sandifer, III
August 10, 1983
Page 2

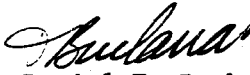
opinion that it would require a minimum of fifty (50) operations to adequately expose the prospective licensee as a basis for licensure, and provide an adequate foundation on which one can expand his experience as a professional following licensure.

Bill, most of all, we should remember that the rules and regulations of any state board are not in existence for the protection of those in the funeral profession, nor are they designed for the convenience of those desiring to enter the profession. Rather, the rules, regulations, requirements, etc., within our profession are established for the protection of the public. If I develop the need to call upon a professional within the State of South Carolina, whether it be a lawyer, doctor, funeral director, or embalmer, I take it for granted that the State has seen to it that that professional whom I call, by virtue of his license, has the ability, both theoretically and practically, to serve my needs.

I congratulate you and the South Carolina State Board of Funeral Service on your efforts to maintain high standards within our profession, and I give you my wholehearted support in your requirement of fifty cases during the course of apprenticeship.

Very truly yours,

GUPTON-JONES COLLEGE


Daniel E. Buchanan
President

cc: file

W. H. PIERCE
CHAIRMAN AND TREASURER
PAUL E. SOLLMAN
PRESIDENT AND SALES MANAGER
JAMES F. MOSHINSKIE
DIRECTOR OF PUBLIC RELATIONS



JOHN W. FIRESTONE
EXECUTIVE VICE PRES. AND SECRETARY
JAMES E. BARBER
VICE-PRESIDENT AND PRODUCTION MGR.
MAUREEN JULIAN
OFFICE MANAGER

PIERCE CHEMICALS

MORTICIANS SUPPLY

409 N. ZANG. (Box 4495) DALLAS, TX 75208

214-942-3127

August 9, 1983

Mr. William E. Sandifer, III, President
South Carolina State Board of Funeral Service
P.O. Box 36
Seneca, South Carolina 29678

Dear Mr. Sandifer:

You have asked me to comment on the section of the present South Carolina State Board of Funeral Service Requirements that an Apprentice shall participate in a minimum of 50 embalmings within a prescribed time as one of the requirements to qualify for a South Carolina license to embalm.

In my judgement and my experience and having been licensed myself for over 25 years -- I would say that 50 bodies as a minimum is reasonable and would help provide a good reason for the recipient to serve the general public.

Sincerely,

PIERCE CHEMICALS

W. H. PIERCE

WHP/db



THE FOLLOWING IS AN EXCERPT FROM AN ARTICLE
ON PROPOSED CHANGES IN THE REGULATIONS BY THE
CALIFORNIA STATE BOARD OF FUNERAL DIRECTORS
AND EMBALMERS. IT APPEARED IN THE JULY, 1983,
"AMERICAN FUNERAL DIRECTOR".

In the section on apprentices, Mr. White indicates CFDA will support the repeal of Section 1227, which requires apprentices to make application for leaves of absence, and repeal of Section 1228, which requires the Board's executive secretary to issue written notification to an apprentice upon completion of his term of apprenticeship.

The Association is uncertain about supporting the changes in Section 1229, Mr. White says. Existing language ~~requires apprentices to prepare for disposition of 100 cases~~. Mr. White explains that "prepare for disposition" is so vague as to be almost meaningless. Existing language also is quite vague about this preparation being done under supervision. Proposed language would change the requirement to read: "An apprentice shall embalm or assist in embalming the first 25 of the required 100 bodies only under the direct supervision and in the presence of his or her designated supervising embalmer."

The Board explains, "The ~~purpose of the apprenticeship is to provide actual practical training in embalming~~. In the absence of any requirement for direct supervision apprentices in some firms have been expected to embalm without any experience or training or, in some cases, denied any training in embalming while being utilized in other types of employment around the mortuary."

BOARD OF EXAMINERS FOR REGISTERED SANITARIANS

TABLE OF CONTENTS

	<u>Page</u>
<u>INTRODUCTION</u>	48
<u>BACKGROUND AND HISTORY</u>	49
<u>SUNSET QUESTIONS AND FINDINGS</u>	51
(1) ECONOMIC IMPACT	51
(2) TERMINATION OF AGENCY	51
(3) ADMINISTRATIVE COSTS	54
(4) ADMINISTRATIVE EFFICIENCY	56
(5) PUBLIC PARTICIPATION	57
(6) DUPLICATION OF SERVICES	58
(7) HANDLING OF COMPLAINTS	58
(8) COMPLIANCE WITH THE LAW	59
<u>APPENDICES</u>	60
1 - Statement of Revenues and Expenditures	61
2 - List of States Who Have Regulatory Boards to Register Sanitarians	62
3 - Legislative Audit Council's Survey of Southeastern States of Registered Sanitarian Boards	63
4 - Schedule of Fees	64
5 - Board's Comments	65

INTRODUCTION

After reviewing its operations and laws, the Legislative Audit Council concludes that the Board of Examiners for Registered Sanitarians should be terminated in accordance with Act 608 of 1978. The Board's only function is to give an examination and grant certification to sanitarians. It does not regulate public health and its function can be assumed by the National Environmental Health Association (NEHA). Since 1975 ten states have "sunsetted" their registration boards for sanitarians and NEHA assumed the certification role performed by these boards.

BACKGROUND AND HISTORY

The South Carolina Board of Examiners for Registered Sanitarians was created by Act 785 of 1962 to "safeguard the life, health and property of the citizens of this State." Its duties are to evaluate, examine and issue certificates of registration to qualified applicants. The Board has the power to adopt bylaws and rules of procedure which may be reasonably necessary to perform its duties.

The Board consists of four members appointed by the Governor, one of whom is the executive officer of the Department of Health and Environmental Control or his designated representative. Each member appointed by the Governor is a registered sanitarian and serves a term of three years. Although not specified by the statute, the South Carolina Environmental Health Association has made all nominations to the Governor for Board membership appointments. The Board meets at least twice annually and holds at least one examination yearly.

According to Section 40-61-10 of the 1976 South Carolina Code of Laws, a sanitarian is trained and qualified to carry out inspection, educational and supervisory duties in the field of general environmental sanitation or any of its specialized programs. For example, a sanitarian may be employed by a governmental or private organization to inspect water and waste water systems, food service facilities, and for insect and rodent control. Registration for a sanitarian is voluntary. According to Section 40-61-80, any person desiring to be registered as a sanitarian may make application to the Board. Section 40-61-70 requires an applicant to have:

- (1) a minimum of one year's experience in the field of environmental sanitation; and

- (2) satisfactorily completed an approved program of study in environmental sanitation. The qualifications relating to experience and study in environmental sanitation shall be subject to approval by the Board. The program of study shall be under the auspices of a college or university or State or Federal public health agency.

The Board's requirements for a person to become a registered sanitarian are the following:

- (1) Graduate of an accredited four-year (4) college or university and one (1) year's experience in environmental sanitation or five (5) years experience in the field of environmental sanitation.
- (2) Successful completion of an approved environmental sanitarian school.
- (3) Successful completion of the registered sanitation written exam as published by the Professional Examination Service of New York.

In accordance with Section 40-61-100 of the 1976 South Carolina Code of Laws, the Board established that registered sanitarians from any other State having equivalent or higher requirements for registration and using the same or higher passing score on the Professional Examination Service's examination would be considered for registration in South Carolina by reciprocity. The Board has registered a total of 423 sanitarians since its inception in 1962. As of April 1983, the Board's current registration totals 268 registered sanitarians.

Presently, 20 states have regulatory boards to register sanitarians (see Appendix 2). Since 1975, ten states in the country have abolished their boards governing registered sanitarians (see Appendix 2). Of ten southeastern states shown in Appendix 3, Alabama, Florida and Mississippi have abolished their sanitarian registration acts.

SUNSET QUESTIONS AND FINDINGS

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Board's current function of examining and registering sanitarians does not affect the cost of environmental health services to the general public.

- (2) WHAT ECONOMIC, FISCAL AND OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW?

There would be no measurable economic, fiscal or other impact in the absence of the Board of Examiners for Registered Sanitarians. The statutes governing the Board do not prohibit individuals from working in the environmental health field without registration. The Board's law represents a relative low level of regulation and does not affect the cost of environmental health service.

The scope of the Board's regulatory duties apply only to "registered sanitarians" or those seeking to become registered. The primary purpose of the Board is to ensure that individuals using the title of "registered sanitarian" have met its qualifications and passed the written national examination. Section 40-61-80 of the 1976 South Carolina Code of Laws states "any person desiring

to be registered as a sanitarian, or issued a permit as a sanitarian-in-training, may make application on a form prescribed and furnished by the Board..." In addition, Section 40-61-120 states:

After January 1, 1963, it shall be unlawful for any person to practice as a "registered sanitarian," or a "sanitarian-in-training" unless the person so practicing has fully complied with the provisions of this Chapter and has been issued a current certificate of registration or permit as a sanitarian-in-training."

According to the Board's bylaws, it is unlawful for a person to be a registered sanitarian in South Carolina without first being licensed by the Board and having paid annual renewal fees. The Board has not issued any permits for a person being a "sanitarian-in-training."

The Audit Council examined the Board's official roster and found that of the 268 current registered sanitarians in the State, 253 or 95% work for governmental agencies while approximately 15 or 5% are employed by private industry. The Audit Council found no evidence of registered sanitarians working as independent, private practitioners.

The South Carolina Department of Health and Environmental Control (DHEC) is responsible for protecting the State's environment, health and sanitation. DHEC's Bureau of Environmental Sanitation employs sanitarians as field technicians and environmentalists to inspect and investigate matters of general sanitation, water and waste water systems, food service facilities, dairy foods and bottling plants, and for insect and vector control. In addition, DHEC is to be the sole advisor of the State in all questions involving the protection of the public's health and shall investigate the causes, character and means of preventing epidemic and endemic diseases.

The majority of the State's registered sanitarians (184 or 69%) are employed by the South Carolina Department of Health and Environmental Control. DHEC requires certain employees in its Bureau of Environmental Sanitation to be "registered" by the Board. Environmentalist II positions which plan and supervise environmental health and sanitation programs through the Bureau's chief are required to be registered sanitarians. However, the Audit Council found no relationship between the existence of the Board and the quality of environmental health services provided by DHEC.

The Attorney General in 1977 issued an opinion stating that the Board's law provided no mandatory language requiring sanitarians to be registered. In its opinion, the Attorney General stated:

...registration is not a condition precedent to performing the duties of a sanitarian in this state... it is the opinion of this office that a sanitarian need not be registered to perform professional duties in this state, whether in private or public practice.

The National Environmental Health Association (NEHA) also examines applicants interested in becoming registered sanitarians. The NEHA requires applicants to have graduated from a four-year college or university and successfully pass the national registered sanitarian examination prepared by the Professional Examination Service. Presently, NEHA examines and registers individuals in environmental health in 23 states.

The State Board of Examiners for Registered Sanitarians is an examination service which certifies the credentials of those who desire to become registered. This function is not essential to protect the public's health safety or welfare.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD ALLOW THE BOARD OF EXAMINERS FOR REGISTERED SANITARIANS TO TERMINATE IN ACCORDANCE WITH ACT 608 OF 1978.

CERTIFICATION OF INDIVIDUALS DESIRING TO BECOME REGISTERED CAN BE OBTAINED THROUGH THE NATIONAL ENVIRONMENTAL HEALTH ASSOCIATION.

DHEC SHOULD CHANGE ITS JOB SPECIFICATIONS WHICH REQUIRE REGISTRATION OF INDIVIDUALS BY THE BOARD TO ACCEPT REGISTRATION THROUGH THE NATIONAL ENVIRONMENTAL HEALTH ASSOCIATION.

- (3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

The Board of Examiners for Registered Sanitarians generates revenues through examination and registration renewal fees to meet its administrative costs (see Appendices 1 and 4). The Board employs one part-time person to assist in clerical work of State administrative requirements and file keeping. Members of the Board are State employees and are not eligible for per diem compensation.

Major expenditures of the Board include the purchase of testing materials for examinations, travel and personal services. In FY 80-81, due to an error in the Board's bookkeeping, the Board exceeded its generated revenue by \$401 by sending one of its members to a National Environmental Health Association meeting. According to Section 40-61-60 of the 1976 South Carolina Code of Laws, the Board shall be self-sustaining and "under no circumstances shall the total amount of warrants issued by the Comptroller General in payment of the expenses and compensation provided for in this chapter exceed the amount collected as herein provided." However, the expenditure did not exceed the Board's appropriations and the overexpenditure was paid with General Fund monies.

For the five-year period examined, the Board held 11 examinations for 102 applicants at a cost of \$3,673. Examination fees increased in FY 76-77 from \$35 to \$50 due to increased examination costs for the national written exam. Required annual registration renewal fees increased from \$5 to \$8 in FY 82-83. For FY 82-83, the Board budgeted an expenditure of \$1,000 to cover costs of printing an updated official roster of Registered Sanitarians and the Board's Code of Laws and established bylaws. In a meeting on January 18, 1983, the Board voted unanimously to increase the salary of its part-time clerical assistance from \$400 to \$800 annually. The State Budget and Control Board, through budget cutbacks, reduced the Board's budget by \$234 in FY 82-83.

(4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAM OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The only function of the Board of Examiners for Registered Sanitarians is to administer examinations to all applicants and to qualify applicants by issuing certificates as registered sanitarians. To administer its duties, in accordance with Section 40-61-40 of the 1976 South Carolina Code of Laws, the Board adopted bylaws and added amendments during Board meetings. Currently, the Board's official office is located at the office of its secretary/treasurer in the Lexington County Health Department. The Board employs one part-time secretary to handle file-keeping and daily administrative activities.

The Audit Council reviewed the minutes of Board meetings to determine policies and found that it has not been consistent in administering its examination. The Board changed its policy for applicant qualifications several times since its legislative inception in 1962. However, the Council could not find any evidence where the Board notified all registered sanitarians of bylaw amendments or policy changes. In 1973, it established requirements for non-college graduates to take and score a minimum of 850 on the Graduate Record Examination, plus have five years experience in environmental health to be eligible for admission to the national written registration examination.

In 1978, due to protests by noncollege graduate applicants, DHEC's Bureau of Environmental Sanitation and an Attorney General's opinion, the Board changed its policy and allowed noncollege graduates to be eligible for the national registration examination

upon completion of five continuous years work experience in the environmental health field.

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

The Audit Council could not find any evidence in the Board's minutes or correspondence files of public notices or participation by the general public at meetings. The Board meets at least twice a year and holds at least one examination yearly. The Board has no public membership and has not held any public hearings. However, the South Carolina Environmental Health Association and the chief and assistant chief of DHEC's Bureau of Environmental Sanitation have attended Board meetings and are involved in the Board's examination policies.

The Board's legislation does not give it regulatory authority over the environmental health industry (see Question 2, p. 51). The South Carolina Department of Health and Environmental Control is charged with the responsibility of protecting the State's environment, health and sanitation. DHEC's employees are involved with making decisions about health and general sanitation which directly affect the citizens of the State. The Board's continued existence would not increase DHEC's effectiveness of inspecting and investigating matters in the field of general environmental sanitation.

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL OR OTHER AGENCY OR ENTITY.

The Board does not duplicate the services, functions and programs of any other State, Federal or local government agency. However, the National Environmental Health Association examines and registers sanitarians in the environmental health field of states who do not have registration acts.

- (7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

In reviewing Board files, the Audit Council could find only one complaint filed with the Board in 21 years. Section 40-61-110 of the 1976 South Carolina Code of Laws gives the Board the authority to suspend or revoke the certificate of registration of a sanitarian who, in the Board's opinion, has committed:

- (a) Any fraud or deceit in obtaining such a certificate or permit;
- (b) Any act of gross negligence, incompetency or misconduct in the performance of any duties authorized by such certificate or permit; or
- (c) Any crime involving moral turpitude.

In addition, the Board, under Section 40-61-130, may impose penalties for any person violating the provisions of the statute. The Board has no formal procedures for recording and handling complaints.

According to the Board's minutes, in 1977 a complaint against a registered sanitarian was heard before the Board to consider the removal of certificate of registration for ethical reasons. The Board voted not to take action and according to the Board's Secretary, the Board has not taken action against any registered sanitarian.

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

The Board has complied with the authority granted it under Act 785 of 1962. However, portions of the Board's statutes are vague and out-of-date for the Board to operate and function as a regulatory agency.

Section 40-61-30 of the 1976 South Carolina Code of Laws does not specify who shall nominate Board members to the Governor for appointment. The Audit Council was told by the Board that the South Carolina Environmental Health Association has made these nominations since the Board's inception. The Board, due to increase examination costs and in accordance with the annual Appropriation Act, has charged examination fees in excess of its statutory limit of \$25 set forth in Section 40-61-80. The Board currently charges \$50 to applicants wishing to be examined.

APPENDICES

APPENDIX 1

SOUTH CAROLINA BOARD OF EXAMINERS FOR REGISTERED SANITARIANS

STATEMENT OF REVENUES AND EXPENDITURES

	<u>FY 78-79</u>	<u>FY 79-80</u>	<u>FY 80-81</u>	<u>FY 81-82</u>	<u>FY 82-83</u> (Estimated)
<u>Revenues</u>					
Application & Examination Fees	\$1,585	\$1,585	\$ 286	\$ 680	\$ 810
Renewal Fees	<u>1,178</u>	<u>1,175</u>	<u>1,324</u>	<u>1,325</u>	<u>1,990</u>
TOTAL	<u>\$2,763</u>	<u>\$2,760</u>	<u>\$1,610</u>	<u>\$2,005</u>	<u>\$2,800</u>
<u>Expenditures</u>					
Personal Services	\$ 388	\$ 400	\$ 400	\$ 400	\$ 400
Printing and Binding	28	-	-	103	1,000
Telephone & Telegraph	-	-	-	7	20
Testing & Other Prof. Services	1,115	800	617	504	637
Office Supplies	-	-	-	-	135
Postage	100	100	100	100	120
Dues & Registration Fees	35	-	50	-	40
Insurance	40	-	-	-	-
Travel	578	535	803	445	551
Employee Benefits	<u>26</u>	<u>54</u>	<u>41</u>	<u>57</u>	<u>54</u>
TOTAL	<u>\$2,310</u>	<u>\$1,889</u>	<u>\$2,011</u>	<u>\$1,616</u>	<u>\$2,957</u>
<u>State Appropriation</u>	<u>\$3,877</u>	<u>\$3,683</u>	<u>\$3,683</u>	<u>\$3,602</u>	<u>\$3,110</u>

Source: State Budget and Control Board and Board of Examiners for Registered Sanitarians records.

APPENDIX 2
LIST OF STATES WHO HAVE
REGULATORY BOARDS TO REGISTER SANITARIANS
AS OF JUNE 30, 1983

<u>State</u>	<u>Regulatory Board</u>
Alabama	No (Sunsetted 1980)
Alaska	No
Arizona	No*
Arkansas	Yes
California	No*
Colorado	No (Sunsetted 1978)
Connecticut	No
Delaware	No
Florida	No (Sunsetted 1978)
Georgia	Yes
Hawaii	No*
Idaho	Yes
Illinois	No (Sunsetted 1980)
Indiana	Yes
Iowa	No
Kansas	No
Kentucky	Yes
Louisiana	Yes
Maine	No
Maryland	Yes
Massachusetts	Yes
Michigan	Yes**
Minnesota	No*
Mississippi	No (Sunsetted 1982)
Missouri	No
Montana	No (Sunsetted 1982)
Nebraska	Yes
Nevada	No (Sunsetted 1977)
New Hampshire	No
New Jersey	No*
New Mexico	No (Sunsetted 1975)
New York	No
North Carolina	Yes
North Dakota	No
Ohio	Yes
Oklahoma	No*
Oregon	Yes
Pennsylvania	No
Rhode Island	Yes
South Carolina	Yes
South Dakota	No (Sunsetted 1979)
Tennessee	Yes
Texas	Yes
Utah	Yes
Vermont	No
Virginia	Yes
Washington	No (Sunsetted 1980)
West Virginia	Yes
Wisconsin	No*
Wyoming	No

*States that have an advisory committee in the department of health to register sanitarians.

**Sunset hearings in progress.

APPENDIX 3

LEGISLATIVE AUDIT COUNCIL'S SURVEY OF

SOUTHEASTERN STATES OF REGISTERED SANITARIAN BOARDS

AS OF JUNE 30, 1983

<u>States</u>	<u>Registration Act</u>	<u>State or National Exam</u>
Alabama	No (Sunsetted 1980)	National ¹
Florida	No (Sunsetted 1978)	National ¹
Georgia	Yes	State
Kentucky	Yes	State
Louisiana	Yes	State
Mississippi	No (Sunsetted 1982)	National ¹
North Carolina	Yes	National
South Carolina	Yes	National
Tennessee	Yes	National
Virginia	Yes	None ²

¹The National Environmental Health Association examines and certifies candidates for meeting certain academic standards in states without regulatory boards.

²Registration is based on two years work experience under the supervision of a registered sanitarian.

APPENDIX 4
BOARD OF EXAMINERS FOR REGISTERED SANITARIANS
SCHEDULE OF FEES
JUNE 30, 1983

Application and Examination Fee	\$50
Annual Renewal Fee	8
Late Fee	4

STATE OF SOUTH CAROLINA

Board of Examiners for Registered Sanitarians



August 8, 1983

Legislative Audit Council
State of South Carolina
620 Bankers Trust Tower
Columbia, South Carolina 29201

Dear Sirs:

The Board of Examiners for Registered Sanitarians vigorously disagreed with your conclusion in the recent review of our Board. The conclusion is essentially a one man decision based upon a cursory evaluation and little or no knowledge of benefits derived from Registration of Sanitarians. In fact, you make no mention of the benefits derived by DHEC from registration as described to your representative by the Bureau Chief of Environmental Sanitation in his interview when you were gathering information for the report. A copy of his comments to me are attached.

We wish to point out that this Board does not cost the State of South Carolina any money. All expenses are covered by annual registration renewal fees. You point out in your report that the Board overspent by \$401.00 in one year yet neglect to mention that more than enough money to cover this error was lapsed to the State General fund during the preceding two years and the following year.

You place emphasis on the invalid assumption that the National Environmental Health Association can provide Sanitarian Registration to South Carolina. This organization provides registration through State Boards of Registration. It does not provide testing service in the States. No other Board is now prepared to provide testing service in South Carolina.

There are not now Merit System examinations in the classification Environmentalist II and above. Registration by the Board is the distinguishing requirement. Examinations would have to be developed to demonstrate competency in the field. That competency is now being demonstrated through Registration by the Board, again at no expense to the State.

Board of Examiners for Registered Sanitarians



- 2 -

The Board, in conjunction with and in support of the South Carolina Environmental Health Association, has been since 1978, attempting to have a revised version of the Registered Sanitarians Act passed by the legislature. If and when this revision is passed, public representation and input will be available on the Board. We wish to emphasize that the members of the Board recognize there are shortcomings with the present legislation, present make up and appointment of Board members, and with the operation and administration of the Board's activities. Our attempt to have revised legislation enacted as well as our support since its inception by the Reorganization Committee of an oversight board to provide administrative services to small boards and commissions demonstrates that recognition.

In conclusion, we feel the report is negatively biased in an attempt to eliminate this Board in order to justify the vast sums of state funds expended on non productive efforts by audit council staffers.

Sincerely,

F. Phillip Ward
F. Phillip Ward
Chairman

SW

cc: Jack H. Vaughan
Franklin E. Mahaffey
Charles A. Cherry

South Carolina Department of Health and Environmental Control

BOARD
J. Lorin Mason, Jr., M.D., Chairman
Gerald A. Kaynard, Vice-Chairman
Leonard W. Douglas, M. D., Secretary
Oren L. Brady, Jr.
Moses H. Clarkson, Jr.
Barbara P. Nuesle
James A. Spruill, Jr.

COMMISSIONER
Robert S. Jackson, M.D.
2600 Bull Street
Columbia, S.C. 29201

August 4, 1983

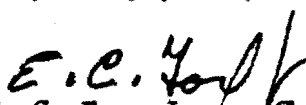
Mr. R. Phillip Ward
Member
South Carolina Board of Examiners
for Registered Sanitarians
1550 West Evans Street
Florence, South Carolina 29501

Dear Mr. Ward:

You have inquired as to my opinion of the benefits which accrue to the Department of Health and Environmental Control and to the citizens of this State by virtue of the existence of the Board of Examiners for Registered Sanitarians.

The function of the Registration Act was to increase and insure professionalism in persons engaged in the practice of environmental sanitation. I feel that registration lends credence to the decisions made by persons employed in the field. The fact that an individual is a registered sanitarian establishes him as a bonafide witness in hearings and court cases. Based on the Registration Act, this Department has been able to work out agreements with other boards for the performance of certain tasks normally restricted to persons registered under those boards during the performance of the sanitarians' duties. On the subjective side, the achievement of registration provides an unmeasurable sense of pride and accomplishment in the recipient, which I feel makes him a better sanitarian.

Very truly yours,


E. C. Fox, Jr., Chief
Bureau of Environmental Sanitation

ECF:ps

South Carolina
Department of
Health and
Environmental
Control

BOARD
J. Lorin Mason, Jr., M.D., Chairman
Gerald A. Kaynard, Vice-Chairman
Leonard W. Douglas, M. D., Secretary
Oren L. Brady, Jr.
Moses H. Clarkson, Jr.
Barbara P. Nuessle
James A. Spruill, Jr.

COMMISSIONER
Robert S. Jackson, M.D.
2600 Bull Street
Columbia, S.C. 29201

August 15, 1983

Mr. Robert Milhous
Legislative Audit Council
620 Bankers Trust Tower
Columbia, South Carolina 29201

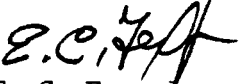
Dear Mr. Milhous:

Thank you for this additional opportunity to comment on the Board of Examiners for Registered Sanitarians. Some of the comments that I have are those which I gave you in our meeting.

The report states that the Council found no relation between the existence of the Board and the quality of environmental health services provided by DHEC. I pointed out to you a number of areas where I felt that the quality of services was improved by registration. I stated that registration insures a broad environmental health knowledge as opposed to the entry level information obtained about an individual through the initial Merit System examination. It is my opinion that the fact of being registered lends credence to the work done by the sanitarian. It certainly establishes him as a bona fide witness in court testimony. This office has reached an agreement with the Board of Engineering Examiners that allows registered sanitarians, in the performance of their duties, to perform certain tasks for which one would otherwise have to be registered as an engineer. While this was an informal agreement, it has assisted this Department immeasurably in its on-site sewage regulation.

The Council's suggestion that the Merit System utilize NEHA's examination would eliminate any non-college graduate from becoming registered in South Carolina. I would recommend that the Council reconsider its decision to terminate the Board.

Very truly yours,


E. C. Fox, Jr., Chief
Bureau of Environmental Sanitation

BOARD OF SOCIAL WORKER REGISTRATION

TABLE OF CONTENTS

	<u>Page</u>
<u>INTRODUCTION</u>	71
<u>BACKGROUND AND HISTORY</u>	72
<u>SUNSET QUESTIONS AND FINDINGS</u>	73
(1) ECONOMIC IMPACT	73
(2) TERMINATION OF AGENCY	73
Board is Not Needed	74
Inadequate Protection to the Public	74
(3) ADMINISTRATIVE COSTS	77
(4) ADMINISTRATIVE EFFICIENCY	77
Renewals Were Not Sent on a Timely Basis	77
Insufficient Control Over Registration Process	78
(5) PUBLIC PARTICIPATION	79
Board's Accessibility to the Public	79
(6) DUPLICATION OF SERVICES	80
(7) HANDLING OF COMPLAINTS	81
(8) COMPLIANCE WITH THE LAW	82
<u>APPENDICES</u>	83
1 - Statement of Revenues and Expenditures	84
2 - Fee Schedule	85
3 - Board's Comments	86

INTRODUCTION

After reviewing its laws and operations, the Audit Council concludes that the Board of Social Worker Registration should be terminated in accordance with Act 608 of 1978. The State's "Sunset Law" requires that a regulatory board, "shall have the burden of demonstrating a public need for its continued existence." The Board of Social Worker Registration does not meet this criteria. State law only provides for voluntary registration of social workers. The Board's authority is limited to "title protection" and it does not regulate the practice of social work.

BACKGROUND AND HISTORY

Act 1226 of 1968 created the State Board of Social Worker Registration to provide for registration of professional social workers. The seven-member board is composed of one lay member and six registered social workers appointed by the Governor. All members must be South Carolina residents and the social workers must have been actively practicing social work for five years prior to appointment. The Board meets at least four times a year and has no office or paid staff.

Registration is voluntary and is restricted to applicants who have the following qualifications:

1. A master's degree from a school of social work accredited by the National Council on Social Work Education, or
2. Membership in good standing in the National Association of Social Workers on May 29, 1968.

A total of 683 social workers have registered with the Board since its inception in 1968. According to the Board's records, in calendar year 1982 there were 351 active members.

SUNSET QUESTIONS AND FINDINGS

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Board of Social Worker Registration is a voluntary organization, and the only cost to registrants is an initial registration fee of \$20 and an annual renewal fee of \$10 (see Question 3, p. 77).

Since the Board does not regulate the practice of social work and does not license or examine social workers, it has no impact on the cost of goods and services.

- (2) WHAT ECONOMIC, FISCAL AND OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Legislative Audit Council recommends the termination of the Board of Social Worker Registration. Since it is a voluntary registration agency, termination would have no economic, fiscal or other impact. The Board as it exists does not regulate the practice of social work in South Carolina, and there is no evidence it is necessary. The following findings explain this in more detail.

Board is Not Needed

After examining its operations and laws, the Council concludes that the Board of Social Worker Registration does not regulate the practice of social work in South Carolina. The Board is a voluntary organization without the authority or means to regulate the practice of social work in the State. A review of its files showed that the Board has received no complaints against individual registrants (see Question 7, p. 81).

Currently, the only qualification necessary for an applicant to become registered is "a master's degree from a school of social work accredited by the National Council on Social Work Education; or membership in good standing in the National Association of Social Workers as of May 29, 1968." Registration allows a person to use the title "registered social worker."

The Board of Social Worker Registration does not fit the criteria of a regulatory board, which is to examine, license and enforce the regulations and ethical conduct of a regulated profession. Under Sunset law, a board should be continued only if a determination is made that the board is necessary to protect the public health, safety and welfare.

Since the Board provides only voluntary registration of social workers and has little enforcement authority, it is not an adequate mechanism for protecting the health, safety and welfare of the public. Also, since the Board has received no complaints against social workers, there is no clear evidence that registration of social workers is needed to protect the public.

Inadequate Protection to the Public

The Council has determined that the Board only offers title protection to persons calling themselves "social workers" and does not protect the

public's health, safety and welfare. According to State Personnel's Classification and Compensation Division, there are approximately 3,255 positions in State Government which perform social work functions. However, only 387 (12%) of these positions use the title "Social Worker." There are 2,868 positions which perform social work functions but are called by a different title, such as Mental Health Counselor, Addiction Specialist, Clinical Counselor, DYS Youth Counselor, etc. Persons in these positions perform similar tasks to persons in "Social Worker" positions.

The Audit Council researched data from the State's Employment Security Commission to determine the number of social work jobs available in other than State agencies. The data indicated that 1,681 positions exist in private industry and other governmental organizations. A survey of the ten most populated cities in South Carolina revealed that only one individual and one agency advertised their services as "social work" in the telephone directory. However, there are a total of 103 individuals and 94 agencies performing similar tasks who advertised themselves as "Counselors," "Marriage and Family Counselors," and "Psychotherapists."

A review of State personnel class specifications showed that Master of Social Work is the preferred degree for Social Worker III, IV, and V positions and for Director of Social Work I and II positions. These classifications make up 255 (66%) of the 387 "social work" positions in State Government. Of the 319 "social work" positions in State Government which were occupied as of May 27, 1983, 173 (54%) were held by persons with either a baccalaureate or Masters degree in social work. Therefore, the evidence indicates that State agencies are attempting to hire persons with social work training to fill these jobs.

Public and private agencies have control over who is hired to practice social work within the purview of that organization. Agencies, therefore, serve a regulatory function with their hiring procedures. However, private individuals who call themselves "Counselors," "Marriage and Family Counselors" or "Psychotherapists" are not subject to regulation (see p. 75). Counselors deal with rather complex mental health problems in offering such services as marriage and family counseling and alcoholism counseling. Their competence or ability to handle the delicate nature of many of these problems depends in large part on their education and work experience.

A survey of nine southeastern states revealed that only five states (Alabama, Florida, Kentucky, Louisiana, and Virginia) currently license social workers. All five states require licensure for social workers in private practice, but they exempt government employees. Four of the states (Florida, Kentucky, Louisiana and Virginia) exempt employees of private agencies. Florida and Virginia have umbrella boards which license all private practitioners in the counseling professions, including social workers, professional counselors, marriage and family therapists, and psychologists.

In South Carolina, only those individuals calling themselves "Social Workers" are registered by the State. Since the Board only provides title protection and it does not regulate the practice of social work, its existence does not protect the public's health, safety or welfare.

RECOMMENDATION

THE GENERAL ASSEMBLY, IN ACCORDANCE WITH
ACT 608 OF 1978, SHOULD CONSIDER TERMINATING
THE STATE BOARD OF SOCIAL WORKER REGISTRATION.

- (3) DETERMINE THE OVERALL COST, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

During FY 81-82, Board expenditures were \$2,280 while revenues, generated through fees, totaled \$2,733. The FY 82-83 State Appropriation totaled \$3,081 (see Appendix 1). The Board is self-supporting through registration fees collected and deposited in the General Fund.

Since the Board has no office or staff, the largest expenditures have been for travel, postage, dues and membership fees, contractual services and printing (see Appendix 1).

- (4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Board of Social Worker Registration never developed policies and procedures to govern its administration and operations. Because of this, the Board lacked adequate control over its registration process. This is discussed in detail below.

Renewals Were Not Sent on a Timely Basis

The Board of Social Worker Registration was late with its renewals in 1982 and 1983. In addition, in 1983 no formal deadline was set for receiving payment for renewals.

Until June 1982, Section 40-63-60 of the 1976 South Carolina Code of Laws stated that Board's renewal fees must be paid before March 1 and set a delinquency fee for late registration. However, in 1982

renewal forms sent to registrants stated the deadline was March 31. In 1983, State Regulation 110-10 again set the renewal deadline at March 1. However, renewal notices were not sent until after March 1, and the form stated that the deadline was March 31.

This practice was unfair to the registrants and resulted in administrative inefficiency. In addition, the Board cannot determine when renewals are late and subject to a delinquency fee.

Insufficient Control Over Registration Process

A review of initial registrations and renewals for 1982 revealed that receipts were not filed in a systematic, readily accessible manner. All of the Board's files were stored in boxes which were dispersed among Board members and kept at their houses.

The Board kept a log of registrants, listed by registration number. This log listed the year a person first registered with the Board, reason for nonrenewal termination (if applicable), dates of renewals, and amounts of fees paid. There were no files of individual registrants to document the history of their affiliation with the Board.

Sufficient controls are needed to ensure the efficient and effective operation of the registration process. All of the Boards which underwent a Sunset review in 1982 (Real Estate Commission, Engineering Examiners, Residential Home Builders, Contractors, Manufactured Housing and Environmental Systems Operators) maintained separate files on individual registrants/ licensees. The Board had no assurance that fees were paid by all voluntary registrants.

RECOMMENDATION

IF THE GENERAL ASSEMBLY REESTABLISHES THE BOARD, ITS RENEWALS SHOULD BE HANDLED IN A TIMELY MANNER AND A MECHANISM SHOULD BE DEVELOPED TO ENSURE THAT THERE IS ADEQUATE CONTROL OVER THE REGULATORY PROCESS.

- (5) DETERMINE THE EXTENT THE AGENCY HAS ENCOURAGED PARTICIPATION OF THE PUBLIC AND THE INDUSTRY IT REGULATES.

A consumer member was added to the Board in 1982 and Board meetings were open to the public, but the Board was not readily accessible to the public. This is explained below.

Board's Accessibility to the Public

The Board of Social Worker Registration was not readily accessible to the public. The Board's address and phone number could not be found in the State Telephone Directory, the public telephone directories, through the South Carolina Program Assistance Line (PAL) or with the Department of Consumer Affairs.

Since the Board's authority is only voluntary registration, this is not too important. The chief purpose of regulation is to protect the health, safety and welfare of the public. This is generally done through the investigation of complaints and the disciplining of registrants. If the Board is inaccessible, there is no guarantee that it will receive complaints in a timely manner. Inaccessibility results in inadequate

protection to the public. Also, the Board has not developed procedures for handling complaints and disciplining registrants (see Question 7, p. 81).

RECOMMENDATIONS

SHOULD THE GENERAL ASSEMBLY REESTABLISH
THE BOARD, IT SHOULD:

- (a) LIST AN ADDRESS AND PHONE NUMBER IN
THE PUBLIC TELEPHONE DIRECTORY AND
THE STATE TELEPHONE DIRECTORY;
 - (b) LIST AN ADDRESS AND PHONE NUMBER WITH
THE SOUTH CAROLINA PROGRAM ASSISTANCE
LINE;
 - (c) PROVIDE THE DEPARTMENT OF CONSUMER
AFFAIRS WITH AN ADDRESS AND PHONE
NUMBER.
- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES
THE SERVICES, FUNCTIONS, AND PROGRAMS ADMINISTERED BY
ANY OTHER STATE, FEDERAL OR OTHER AGENCY.

The Board does not duplicate the services, functions and
programs of any other State, Federal or local government entity.

- (7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

A review of the Board's correspondence files from 1978 through 1982 and its minutes from 1980 to May 1983 revealed that no complaints were filed against individual social workers registered with the Board. The FY 80-81 Annual Report of Occupational and Professional Licensing Boards also stated that the Board had received no complaints in FY 80-81. The Board had statutory authority to discipline a registrant who had been convicted of a felony or misdemeanor or who was "guilty of conduct reflecting discredit upon his profession."

Investigating complaints is one of the chief responsibilities of a regulatory board. Written policies and procedures are needed to ensure consistency in enforcing standards. However, the Board never developed policies and procedures for handling complaints or disciplining registrants. If the Board had received any complaints, it would not have been adequately prepared to deal with them.

RECOMMENDATION

IF THE GENERAL ASSEMBLY REESTABLISHES THE BOARD, IT SHOULD DEVELOP WRITTEN POLICIES AND PROCEDURES FOR HANDLING COMPLAINTS AND DISCIPLINING REGISTRANTS.

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

The Board has complied with all State statutes and regulations relating to the voluntary registration of social workers in South Carolina.

APPENDICES

APPENDIX 1

SOUTH CAROLINA BOARD OF SOCIAL WORKER REGISTRATION

STATEMENT OF REVENUES AND EXPENDITURES

	<u>FY 78-79</u>	<u>FY 79-80</u>	<u>FY 80-81</u>	<u>FY 81-82</u>	<u>FY 82-83</u> (Estimated)
<u>Revenues</u>					
Application Fees	\$ 570	\$ 680	\$ 240	\$ 365	\$ 500
Licensure Renewal Fees	1,620	1,425	1,840	1,740	2,100
Penalty Fee for Renewal	100	360	195	-	-
Seminars & Directory Sales	214	272	-	-	-
Miscellaneous Income	-	-	262	1	-
Training Conf. Regis. Fee	-	-	-	627	400
TOTAL	<u>\$2,504</u>	<u>\$2,737</u>	<u>\$2,537</u>	<u>\$2,733</u>	<u>\$3,000</u>
<u>Expenditures</u>					
Per Diem	\$ 175	\$ 140	\$ 140	\$ 35	\$ 179
Travel - In-state	307	451	1,002	600	502
Travel - Non-state	-	35	169	484	-
Telephone & Telegraph	50	144	-	-	-
Printing, Binding & Adv.	-	489	188	131	50
Other Contractual Services	690	148	85	192	870
Supplies	25	113	7	51	581
Postage	118	367	270	387	200
Dues & Membership Fees	520	500	-	337	520
Other	28	184	479	63	28
TOTAL	<u>\$1,913</u>	<u>\$2,571</u>	<u>\$2,340</u>	<u>\$2,280</u>	<u>\$2,930</u>
<u>State Appropriation</u>	<u>\$3,033</u>	<u>\$2,881</u>	<u>\$3,081</u>	<u>\$3,014</u>	<u>\$3,081</u>

Source: South Carolina State Budget and Control Board.

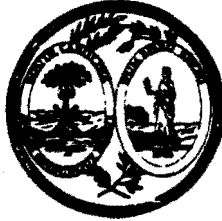
APPENDIX 2

SCHEDULE OF FEES

BOARD OF SOCIAL WORKER REGISTRATION

Registration	\$20
Renewal	\$10
Delinquency fee for renewal	\$ 5

STATE OF SOUTH CAROLINA



BOARD OF SOCIAL WORKER REGISTRATION
P. O. BOX 1083
COLUMBIA, SOUTH CAROLINA 29202

August 18, 1983

Mr. Carroll Allen
Legislative Audit Council
620 Bankers Trust Towers
Columbia, South Carolina

Dear Mr. Allen:

Enclosed please find our response to your draft of the sunset review audit of the South Carolina Board of Social Worker Registration.

We appreciate the time for our response being extended to 5:00pm on Aug. 18, 1983. This made it possible for more of our Board to be able to review your draft and to participate in writing the response. As was discussed with you, we are a seven(7) member volunteer Board with statewide representation. Therefore, we felt it advisable to have as much input from Board members as possible. Your extending the response time made this possible. Thank you.

If there are any questions, please feel free to contact me at home (534-2585) or at the office (536-7092).

Sincerely,

A handwritten signature in cursive script that reads "Kaye W. Borgstedt".

(Mrs.) Kaye W. Borgstedt, ACSW; RSW
Chairperson

KWB:ps

STATE OF SOUTH CAROLINA



BOARD OF SOCIAL WORKER REGISTRATION
P. O. BOX 1083
COLUMBIA, SOUTH CAROLINA 29202

Response to Draft Report of Legislative Audit Council

Having read the draft report of our sunset review audit, we would like to address the following issues and request that you change these points before the final report is submitted:

On page 74 in response to the statement that a Master of Social Work degree from an accredited school of social work or membership in the National Association of Social Workers prior to May 1968 are the only qualifications for registration, we would like to add that each application is carefully reviewed by Board members to verify documentation.

On pages 77, 78 and 79 there are questions concerning policies and procedures for controlling the registration process and renewal procedures. Even though our files have to be kept in Board members' offices or homes because funds do not permit an office or paid staff, we feel that we have an orderly process for registering new applicants in a timely manner. We have even developed a procedure to verify and approve applications between Board meetings. We do have receipts filed in alphabetical order.

Our 1968 law does not require that we bill members with renewal notices. However, we have done so, admittedly late on occasion, but remember that we are a volunteer Board with changing membership. The State Auditor has not only assured us

that our record keeping system is in order but, verbally, complimented us on the thoroughness of our record keeping.

Pages 79 and 80 deal with our accessibility to the public. The work and activities of the Board have been publicized over the years in the Chapter Update of the South Carolina Chapter of the National Association of Social Workers. Meeting notices and agendas have been posted at the meeting site and sent to the news media.

The work of the Board is certainly known to the social work community of the state, as evidenced by phone calls to the officers at their homes or offices and by a continuing number of applications for voluntary registration. A citizen advocate for children had no difficulty contacting the Board and coming to a Board meeting. This individual lives in Myrtle Beach.

Page 81 refers to a procedure for handling complaints. The representative of the Attorney General assigned to serve the Board advised the officers earlier this year that the state Administrative Procedures Act would be applicable in dealing with any formal public complaints. No such complaints have ever been received in the memory of officers currently serving their sixth year on the Board.

In conclusion, the report of the Legislative Audit Council is not seen as an indictment of the Board of Social Worker Registration.

The report represents the best possible argument for amendment of the law to create mandatory licensure of persons who practice social work, regardless of their job title. The public

is not protected -- and cannot be protected -- by a law which provides only for voluntary registration of social workers.

Would the public health, safety and welfare be protected if doctors or nurses or pharmacists or architects or a variety of other professionals were licensed or registered only if they chose to be licensed or registered?

Efforts over the years by our Board to amend the 1968 act to bring about mandatory licensing have borne little fruit. Essentially, the only changes made to the original act have permitted the Board to determine its own fee structure and to create a required program of continuing education. Of course, this continuing education requirements affects only those practitioners who choose to voluntarily register themselves with the Board.

The report of the Legislative Audit Council comments on the fact that the Board has not maintained an office or had a phone number and that files were kept in the homes or offices of Board officers. This is correct, and this condition is a consequence of the 1968 act, which set a very low fee for initial registration and for renewal of registration and -- most importantly -- called only for voluntary registration. If the law had required mandatory licensure, the Board could have created and maintained an office, possibly even with the minimal fee structure which was set in the original act. Hundreds more social workers would have been covered under a mandatory act, providing substantially more income. It should be kept in mind that the Board receives no state funds and must rely entirely on the money it raises from

registration fees and any income it might derive from the continuing education meeting which has been conducted annually.

Finally, there are two bills currently before the Legislature which would bring about mandatory licensure. The Board of Social Worker Registration has initiated and strongly endorses such action. Because of the concern of the Legislative Audit Council for protection of the health, safety and welfare of the public, the Board is confident that the Council will give its vigorous support to enactment of such legislation.

The Board of Social Worker Registration does not concur with the Council's recommendation that the Board be abolished. The Board would concur with such a recommendation only if it were accompanied by a strongly worded statement supporting the passage of a bill creating a system of mandatory licensure.

DAIRY COMMISSION

TABLE OF CONTENTS

	<u>Page</u>
<u>INTRODUCTION</u>	93
<u>BACKGROUND AND HISTORY</u>	94
<u>SUNSET QUESTIONS AND FINDINGS</u>	98
(1) ECONOMIC IMPACT	98
(2) TERMINATION OF THE AGENCY	103
(3) ADMINISTRATIVE COSTS	105
Commission Can Cut Costs and Staff	107
(4) ADMINISTRATIVE EFFICIENCY	109
Milk Utilization Audits Need Auditor Rotation . . .	110
Director's Vehicle Assignment Not Warranted . . .	111
State Procedures for Hiring Private Attorneys Need Improvement	113
(5) PUBLIC PARTICIPATION	116
(6) DUPLICATION OF SERVICES	118
(7) HANDLING OF COMPLAINTS	118
Formal Procedures for Handling of Complaints Needed	119
(8) COMPLIANCE WITH THE LAW	121
Unlicensed Milk Producers Operating in the State .	121
Additional Requirements for Licensure Needed . . .	123
<u>APPENDICES</u>	127
1 - Statement of Revenues and Expenditures	128
2 - Types of Milk Control by State	130
3 - Milk Marketing Areas Under Federal Orders	131
4 - Index of Illustrations	132
5 - Commission's Comments	133

INTRODUCTION

After reviewing its operations and laws, the Audit Council concludes that the Dairy Commission continue to operate as an independent, regulatory State agency. The Commission establishes minimum producer prices for Class I milk in South Carolina. Although these prices can be regulated by a Federal Milk Market Order, the Commission provides direct public access as a local board with consumer representatives who are accountable to the State's industry and its citizens.

BACKGROUND AND HISTORY

History of Government Regulation

Government intervention in the milk marketing process has occurred since the Great Depression. Prior to that time, in the decade of the twenties, the milk industry enjoyed a generally favorable economic climate with virtually no government involvement in the market. Government actions to protect the public interest by assuring an adequate supply of milk were enacted, in the 1930's, at both the Federal and State levels. The widespread belief and theory was that government involvement through price control would protect producers through establishment of orderly marketing and stability, thereby assuring the production of an adequate supply of milk. Governments began setting prices not only at the producer level, but also at the resale level. In this respect, resale refers to both wholesale and retail sales.

Federal and State Control

The Federal Government, after an unsuccessful attempt in 1933 to regulate all milk prices, created Federal Milk Market Orders. These Federal Orders, instituted in 1937 by the United States Department of Agriculture, established minimum producer prices only. Such orders are implemented at the request of producers in a given milk production area.

Federal Milk Market Orders differ from the earlier Federal efforts primarily from the standpoint that they focus only upon producer prices rather than all prices; i.e., producer, distributor, and retailer prices. Federal orders accounted for 80% of the nation's fluid milk sales in 1979.

In some cases, the geographical area covered by a Federal Milk Market Order is part of a State while in other cases, it may encompass several states. The purpose is to provide a constant and adequate supply of milk. Appendix 3 shows the Federal Milk Market System as of July 1, 1982.

During the 1930's, states were faced with various options to seek relief from the chaotic conditions in the milk industry. The milk industry in some areas of the nation sought Federal controls while in other instances state controls over both producer and resale prices were implemented. In many cases, the state laws were emergency and apparently temporary measures intended to overcome the conditions which existed. South Carolina did not experience a need for controls until its milk industry began to mature after World War II.

Today, six states have authority to control resale milk prices, a decrease from 26 since the 1930's. In some states, such as South Carolina, state milk price controls were the only form of price controls while in other states a combination of Federal and State price controls existed.

South Carolina Dairy Commission - History and Authority

The South Carolina Dairy Commission was created by Act 230 of 1953. Its original function was to audit the payments made to producers by processor/distributors to ensure correct payment. There were no powers granted to the Commission to fix resale prices.

In 1955, the Commission was given authority to permit the fixing of prices at all levels from the producer to the consumer under emergency

conditions. Four times, from 1960 to 1967, the State Supreme Court ruled that the setting of retail prices was unconstitutional. However, under emergency powers, the Commission continued setting prices at all levels, including retail.

The setting of prices at all levels continued until February 1975 at which time the Commission suspended the fixing of retail prices. Their reasoning was that market stability could be maintained by setting wholesale prices and preventing sales of milk below cost.

In December 1978, the Dairy Commission was confronted with opposition to a price increase by the Office of the Consumer Advocate who contended that the Commission had not followed the proper legal procedure for setting prices since no public hearings were held. On March 19, 1979, the Circuit Court issued a temporary injunction against enforcement of a wholesale price increase. The South Carolina Supreme Court, in January 1980, affirmed this decision of the Circuit Court.

In 1980, the Audit Council released its report on the Management and Performance Review of the Dairy Commission. Following the release of the 1980 report, the Commission's laws and regulations were revised by Act 82 of 1981. Incorporated into the new law were many of the report's recommended changes: the establishment and setting of producer prices only through the utilization of an economic formula; that Clemson University annually perform an actual cost study of milk production in the State; and, an equal number of consumer members to industry members should serve on the Commission and the authorization of a market-wide pool.

Today, the Commission is authorized to regulate only the marketing of Grade A milk. Section 39-33-50 of the 1976 South Carolina Code of Laws states that the Commission "shall supervise and regulate the

purchase, distribution, disposal, marketing, consignment and sales of all milk..." Laws governing milk as they relate to health, sanitation, quality and labeling are under the jurisdiction of the Department of Health and Environmental Control. Under Act 82, the Commission is only authorized to establish the minimum price distributors pay to producers. There is no authority in the current statute which authorizes the Commission to regulate minimum wholesale and retail prices.

SUNSET QUESTIONS AND FINDINGS

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The dairy industry, like other industries, passes its costs on to the consumer. However, since the Dairy Commission only sets prices at the producer level, the Council could not determine the total cost that regulation adds to the price of milk. However, direct costs of the Commission to the industry can be identified. (see Question 3, p. 105).

Table 1 shows the minimum producer prices set by the Commission from 1966 to 1982. Producer Pricing Order 83-1, which became effective April 1, 1983, continues to establish a minimum price of \$16.15 per hundredweight for Class I milk.

TABLE 1
MINIMUM CLASS I MILK PRODUCER PRICE SET BY THE
SOUTH CAROLINA DAIRY COMMISSION BY DATE

<u>Date</u>	<u>Producer Prices</u>	<u>Date</u>	<u>Producer Prices</u>
	<u>Per 100 lbs.</u> <u>3.5% Butterfat</u>		<u>Per 100 lbs.</u> <u>3.5% Butterfat</u>
07/01/66	\$6.15	09/01/75	\$10.99
09/01/66	6.65	12/01/75	11.25
09/01/67	6.77	09/01/76	11.51
10/01/68	6.90	12/01/77	11.64
02/01/69	6.90	06/01/78	11.77
06/01/70	7.40 ^a	10/01/78	12.16
12/15/72	7.68	02/19/79	13.08
02/15/73	8.22	10/01/79	14.08
08/06/73	9.12	07/01/80	14.95
09/15/73	9.30	02/01/81	15.85
12/01/73	10.60	03/15/82	16.15

^aThe price per 100 lbs. was changed from a base of 4% butterfat content to 3.5%. Prices prior to June 1970 have been converted to 3.5% butterfat by reducing the 4% price by 35¢.

Source: South Carolina Dairy Commission Records.

Tables 2 and 3 give comparative information on retail and producer prices in South Carolina, North Carolina, Virginia, Georgia and Alabama. The tables show that both the State's producer and retail prices are closely aligned with those of North Carolina and Virginia who are also under State control. In Federal milk market order areas of Georgia and Alabama, producer prices are lower, however, the retail prices are comparable.

TABLE 2

MINIMUM PRODUCER PRICES PER HUNDREDWEIGHT

CLASS I 3.5% BUTTERFAT MILK

DECEMBER 1980 TO MARCH 1983

Date	South Carolina	North Carolina	Virginia		Georgia Federal Order #7	Tennessee Federal Order #11	Alabama ¹				Minnesota- Wisconsin Price
			Eastern	Western			Zone 1	Zone 2	Zone 3	Zone 4	
12/80	\$ 14.95	\$ 15.82	\$ 16.16	\$ 15.96	\$ 14.82	\$ 14.62	\$ 14.62	\$ 14.82	\$ 14.92	\$ 15.19	\$ 12.61
3/81	15.85	15.82	16.36	16.16	14.96	14.76	14.76	14.96	15.06	15.33	12.67
6/81	15.85	16.28	16.36	16.16	14.91	14.71	14.71	14.91	15.01	15.28	12.59
9/81	15.85	16.28	16.36	16.16	14.77	14.57	14.57	14.77	14.87	15.14	12.46
12/81	15.85	16.28	16.36	16.16	14.82	14.62	14.62	14.82	14.92	15.19	12.56
3/82	16.15	15.87	16.16	15.96	14.76	14.56	14.56	14.85	14.95	15.22	12.45
6/82	16.15	16.17	16.16	15.96	14.73	14.53	-	-	-	-	12.42
9/82	16.15	16.17	16.16	15.96	14.74	14.54	-	-	-	-	12.46
12/82	16.15	16.17	15.96	15.76	14.86	14.66	-	-	-	-	12.62
3/83	16.15	16.17	16.16	15.96	14.92	14.72	14.72	14.92	15.07	-	12.62

¹ Alabama's producer price for March 1983 is Federal Market Order #93

Source: South Carolina Dairy Commission Pricing Announcements.
United States Department of Agriculture, Statistical Reporting Service.

TABLE 3
A COMPARISON OF RETAIL PRICES OF ONE GALLON OF CLASS I 3.5% BUTTERFAT MILK
1982 QUARTERLY

State	March 1982		June 1982		September 1982		December 1982	
	Range	Prevailing Price	Range	Prevailing Price	Range	Prevailing Price	Range	Prevailing Price
<u>Alabama</u>								
Montgomery	-	-	\$ 1.89-2.38	-	\$ 1.89-2.38	-	-	-
<u>Georgia</u>								
Dalton	\$ 1.99-2.43	\$ 2.15	-	-	\$ 1.99-2.15	\$ 2.13	\$ 2.29-2.31	\$ 2.31
<u>North Carolina</u>								
Asheville	\$ 1.99-2.19	\$ 2.09	\$ 1.99-2.19	\$ 2.09	\$ 1.99-2.23	-	\$ 2.09-2.25	\$ 2.09
Charlotte	1.89-2.19	1.89	1.89-2.19	1.89	1.89-2.23	\$ 1.89	1.89-2.19	1.85
Raleigh	1.83-2.49	2.35	1.83-2.41	2.29	1.89-2.35	2.29	2.29-2.41	2.29
Winston-Salem	1.85-2.19	1.87	1.85-2.19	1.87	1.85-2.19	1.87	1.85-2.19	1.85
Greensboro	1.99-2.49	1.97	1.89-2.35	1.97	1.97-2.35	1.97	1.89-2.35	1.97
<u>Virginia</u>								
Eastern	\$ 1.99-2.43	\$ 2.09	\$ 1.99-2.19	\$ 2.09	\$ 1.93-2.39	\$ 2.19	\$ 1.89-2.19	\$ 2.19
Western	1.89-2.15	2.05	1.89-2.09	1.93	1.89-2.19	2.15	1.93-2.49	2.05
<u>South Carolina</u>								
Charleston	\$ 1.85-2.35	\$ 2.09	\$ 1.99-2.45	\$ 1.99	\$ 1.88-2.49	\$ 1.99	\$ 1.79-2.49	\$ 1.99
Columbia	1.83-2.49	2.09	1.99-2.56	2.09	2.09-2.56	2.09	1.79-2.56	2.09
Greenville	1.63-2.17	2.09	1.85-2.39	2.15	1.83-2.23	1.85	1.79-2.39	2.15

Source: Supermarket Price Survey, International Association of Milk Control Agencies.

The Dairy Commission is no longer empowered to set wholesale and retail prices of milk. Act 82 of 1981 gives the Commission the authority to establish minimum producer prices for Class I milk. To set producer prices, Section 39-33-60 of the 1976 South Carolina Code of Laws requires the Commission to adopt an economic formula for pricing. The formula, developed by Clemson University, consists of four weighted components which are index numbers obtained or computed from data published monthly. The following are the components in which the index is computed:

- (a) Minnesota - Wisconsin Milk Price Series - 45%
- (b) Average price paid for 16% of dairy feed in S.C. - 30%
- (c) Average weekly earnings in manufacturing in S.C. - 15%
- (d) Index of prices paid for production items, interest, taxes and wage rates in the US - 10%.

The University updates the pertinent economic factors relevant to the cost of producing milk in the State and reports its findings to the Commission annually. Upon receipt of the report, the Commission holds a public hearing to review the study and any other factors affecting the cost of producing milk. At these hearings, the Commission makes adjustments in the formula, if any are necessary to reflect relevant economic trends. The FY 81-82 and FY 82-83 Appropriation Act directs the Commission to pay Clemson \$22,500 to annually update the cost study.

(2) WHAT ECONOMIC, FISCAL AND OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW?

Without the South Carolina Dairy Commission, producers can organize a cooperative and elect to market their milk under a Federal Milk Market Order. The State would still have a continuation of minimum producer prices, as well as, milk utilization audits to ensure that producers are properly paid by processors.

The states fixing resale prices in the milk industry are in the minority. On the other hand, the following illustration discloses that 98% of the states (49) have producer price regulation of some form. Considering this and that 80% of the nation's drinking milk is regulated under Federal producer controls, it becomes obvious that virtually all drinking milk is subject to either State or Federal producer price controls. These statistics lead to the conclusion that (1) most jurisdictions accept the premise that milk prices need to be stabilized by government intervention at the farm level to assure an adequate supply of milk; and (2) price regulation at the resale level is not universally accepted as being necessary to assure an adequate supply of milk.

There are four general levels of price controls existing among the states. These general levels are summarized in the following Table and depicted on a state-by-state basis in Appendix 2. A map in Appendix 3 shows Federal milk marketing areas across the United States.

TABLE 4
MILK PRICE CONTROLS IN THE 50 STATES
AS OF FEBRUARY 1983

<u>Level of Control</u>	<u>States</u>	
	<u>Number</u>	<u>Percent</u>
<u>Producer</u>		
Federal	35	70
State	14	28
None	1	2
TOTAL	<u>50</u>	<u>100</u>
<u>Wholesale</u>		
State	5	10
None	45	90
TOTAL	<u>50</u>	<u>100</u>
<u>Retail</u>		
State	5	10
None	45	90
TOTAL	<u>50</u>	<u>100</u>
<u>Trade Practices Regulation</u>		
State	24	48
None	26	52
TOTAL	<u>50</u>	<u>100</u>

Source: United States Department of Agriculture

The extent and level of controls over milk prices varies among the states. Some states have price controls at all levels while other states have price controls only at the producer level or resale level. Only one state has no price controls whatsoever - Alaska. As shown in the preceding illustration, only five states have milk price controls at the wholesale level and only five states control the retail price of milk. The status of price control in the

milk industry is further illustrated by Appendix 2. Analysis of Appendix 2 shows that 88% (44 states) do not fix resale milk prices and only 10% (five states) do. South Carolina's authority to set resale prices was repealed in 1981 by Act 82.

In the absence of a Dairy Commission, the Federal Government would control producer prices of drinking milk, through a Federal Milk Market Order. Under a Federal Order, South Carolina producers may sell a lower volume of their milk at Class I prices. Minimum producer prices would be set by the Federal rather than State Government. However, under a Federal Order, there would not be direct access to a local commission with consumer representatives who are currently accountable to the State's industry and its citizens.

(3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

The Dairy Commission has a staff of seven employees and expended a total of \$216,465 during FY 81-82, and is estimated to spend \$236,548 in appropriated funds for FY 82-83. For FY 81-82, the Commission budgeted \$216,465 and assessed the dairy industry \$216,466 to cover direct expenditures (see Appendix 1). The Commission estimates direct expenditures will total \$236,548 in FY 82-83. The Commission is authorized to regulate and supervise the purchase, distribution, disposal, marketing, consignment and sale of milk in the State. The Commission's duties are administered by a director who is responsible for overall enforcement and supervision of a six-member staff.

The staff consists of an administrative assistant, an assistant director and two field auditors, assisted by two clerks. While one auditor and one clerk plan to retire in June 1983, the director stated that he plans to fill both positions with field auditors. However, the Commission could improve efficiency and save approximately \$17,000 annually by not filling the clerk position and purchasing a word processing system (see p. 107).

The Dairy Commission Account was established by Section 39-33-40 of the 1976 South Carolina Code of Laws. This provision allows the Dairy Commission to carry forward the difference between the assessments collected and the funds appropriated by the Commission.

The FY 81-82 and FY 82-83 Appropriation Acts provide that the Dairy Commission pay Clemson University Extension Services \$22,500 for the expenses incurred in the determination of prices to be paid milk producers. Also, in January 1982, the Governor's Office authorized the expenditure of \$9,214 in non-appropriated funds to Clemson for the development of the economic formula.

The funding for the Commission is from an assessment on the milk industry of approximately 2.7¢ per hundredweight of milk handled or sold in the State. One-half of the assessment due on milk received from producers is deducted by the distributor from funds owed to the producer and one-half is assessed the distributor. The Commission raised the assessment to 3.7¢ on March 30, 1982 for the months of March and April to cover the cost of the economic formula and the cost study.

In addition, on March 24, 1983, the Commission increased the assessment from 2.7¢ to 4.5¢ for March, April and May to cover an increase in expenditures. The Commission had to pay Clemson University for its services of developing an economic formula and performing a cost study. Also, the retirement of two employees necessitated a lump sum payment for accrued annual leave. The following explains how the Commission can cut its staff size and save money.

Commission Can Cut Costs and Staff

Through office automation, the Dairy Commission can save approximately \$17,000 annually, reducing its staff size by one position and improving staff efficiency by 40-60%. In FY 82-83, \$153,494 was appropriated in personal services for the Dairy Commission for a director and a staff of six. A clerk for the Commission, whose salary is \$16,940, plans to retire in June 1983. The director told the Council that he plans to fill this position with an additional field auditor. However, with a one-time investment of approximately \$12,000 to \$15,000, the Commission could purchase a "stand-alone word processing system" with the FY 83-84 funds budgeted for the clerk position and improve the Commission's administrative efficiency. This system would update the Commission's equipment, much of which is outdated and obsolete and would not require the hiring of a clerk to operate it.

The Commission's monthly and annual document generation is routine and repetitive, which includes meeting notices, hearing and pricing announcements and agendas. The Commission's clerk processes data and statistical work by hand or on keypunch cards which is time

consuming, tedious and subject to human error. Also, the chief auditor, who devotes much of his time to statistical work, is seldom able to help perform milk utilization audits on the State's dairy industry.

An objective of office automation is to reduce the amount of time that office workers spend performing tedious, routine and repetitive jobs. The result is to provide more time for doing creative and accurate decision making tasks. Office automation can improve productivity by providing better access to useful information. At the request of the Audit Council, the Office of Information Resources Management of General Services performed an office automation assessment of the Commission as a part of the Sunset Review. In a letter to the Council dated April 20, 1983, the office stated that the administrative needs of the Dairy Commission could easily be met with a "stand-alone word processing system."

Office automation is a one-time investment which enables the Commission to cut its staff size by one employee and save up to \$17,000 annually. The Commission would not have to expend extra funds on this system and, the work level of the existing staff can be improved an estimated 40-60%. Automating data manipulation will give the chief auditor and his staff more time for fieldwork. Furthermore, automated word processing capability allows the production of high quality documents in far less time than the traditional methods of typing, editing and retyping.

RECOMMENDATION

THE DAIRY COMMISSION SHOULD NOT FILL THE
CLERK POSITION WHICH IS BEING VACATED
THROUGH RETIREMENT. THE COMMISSION SHOULD

USE THE FY 83-84 BUDGETED FUNDS FOR THIS POSITION IN A ONE-TIME INVESTMENT, TO PURCHASE A "STAND-ALONE WORD PROCESSING SYSTEM."

- (4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAM OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The main function of the Dairy Commission is to regulate the marketing of milk sold in the state by licensing producers and distributors and by establishing minimum producer prices. The Commission has developed new regulations for this function set forth in Act 82 of 1981.

The Audit Council, found the Commission is in need of improvements in several administrative areas. In order to administer its duties in the most effective and cost efficient fashion, the Commission's audit process needs more objectivity and reliability. The purchase and maintenance of a State vehicle permanently assigned to the director is unwarranted and costly to the dairy industry. Also, State procedures for hiring private attorneys needs improvement. In addition, the Council found that in order to increase administrative efficiency, the Commission is in need of a system to record and track complaints (see Question 7, p. 118). These problems are discussed more fully on the following pages.

Milk Utilization Audits Need Auditor Rotation

The Dairy Commission's audit process does not ensure adequate control for audit reliability and objectivity. The Commission employs two full time auditors who have reviewed the same milk processor plants each month for the past three years.

The Dairy Commission auditors are required to audit nine milk processor plants monthly. These audits verify monthly reports for the amount of classified milk processed by the plant and determine producer compliance with the State's required minimum price paid for each classified hundred pound weight of milk. However, the Commission does not rotate its auditors or their work assignments.

For the past three years, one auditor has been assigned to perform monthly audits on the same six milk processing plants. For FY 80-81, this auditor traveled 13,267 miles and 11,907 miles in FY 81-82. The Commission's other auditor traveled only 985 miles in FY 80-81 and 1,062 miles in FY 81-82 auditing three plants in the middle of the state. Audit rotation is necessary to more equally assign workloads among the staff.

The Commission's Regulation 37-1(2), requires monthly audits of milk processing plants to ensure proper payment to dairy farmers. It is management's responsibility to ensure that a proper audit structure and procedure is provided to minimize the chances of undetected errors or irregularities. An effective procedure is to require the Commission's auditors to visit different milk plants every month. This would enhance independence and objectivity by giving the Commission different individual assessments of the records at a particular plant. Audit reliability would be increased with monthly assignment rotation and would ensure the milk industry of a thorough review.

Director's Vehicle Assignment Not Warranted

The Dairy Commission's permanent assignment of a State vehicle to its director is unwarranted and is not in accordance with State Motor Vehicle Management (MVM) policies. The Commission has purchased and maintained a vehicle for its director since 1961. The director uses his assigned car to commute to and from work with "official" mileage averaging 4,500 miles a year. In addition, the Commission's vehicle is not marked with State Seal decals or agency seals as required by MVM regulations.

The Council examined the Commission's travel vouchers for FY 80-81 and FY 81-82 and found that the director drove his assigned vehicle 40% less than the 11,000 "official State business" miles which Department of Motor Vehicle Management establishes as the basis for need. The Council could not determine actual "official State business" mileage from the Commission's travel records due to the lack of updated trip logs. However, commuting mileage was estimated at a minimum of 14 miles per day equalling 3,500 miles annually with total vehicle operating costs ranging up to \$2,200 per year. For FY 81-82, the operation of the director's vehicle cost the Commission an estimated \$.45 per "official State business" mile. Since FY 80-81, this vehicle has cost the Commission over \$3,500 in fuel, maintenance and repairs. The Commission is currently seeking replacement of its 1976 vehicle and has ordered a new vehicle at a cost of \$8,180. Table 5 shows annual mileage and costs for the director's State-owned vehicle.

TABLE 5
DAIRY COMMISSION DIRECTOR'S PERMANENTLY ASSIGNED
VEHICLE ANNUAL COSTS AND MILEAGE DRIVEN
FY 80-81 AND FY 81-82

<u>Fiscal Year</u>	<u>Total Annual Mileage¹</u>	<u>Estimated "Official Business" Mileage</u>	<u>Estimated Commuting Mileage</u>	<u>Unidentified Mileage</u>	<u>Total Annual Vehicle Costs</u>
80-81	9,803	4,066	3,500	2,237	\$1,363
81-82	11,662	4,873	3,500	3,289	2,224

¹Source: Budget and Control Board's Division of Motor Vehicle Management, "Governor's Mileage Reports" for the Director's 1976 Plymouth Fury.

According to the Commission's director, the assigned State vehicle is used daily for official State business and is necessary in the performance of his duties where travel is required. The Council was also told by the director that the field auditors of the Commission are required to supply and use their personally-owned vehicles in performing milk utilization audits on the State's dairy industry. One of the Commission's auditors traveled a total of 13,267 miles in FY 80-81 and 11,907 in FY 81-82.

In the Audit Council's reports of the State's Motor Vehicle Management Program (March 1978, April 1979 and 1980), the Council found that State motor vehicles were often assigned on the basis of a State employee's position rather than his or her need for the vehicle to conduct official State business. The Budget and Control Board's Division of Motor Vehicle Management has promulgated policies and procedures for the purchasing and individual assignment of State vehicles. The

State's Motor Vehicle Management Manual establishes individual assignment of vehicles to be based on the "functional needs" of the job which would require "official State business" travel of 11,000 miles or more per year. According to the Manual, all miles not driven for official State business is commuting mileage. The Dairy Commission's vehicle does not meet this criteria.

Permitting the director to use a permanently assigned State-owned vehicle for limited official travel results in unnecessary expenditures for the Commission. In effect, the State's dairy industry is paying for the Commission's director to drive to and from work, and thus the director is indirectly receiving supplemental income through the sole use of a State-owned vehicle. Personal use of a State-owned vehicle only benefits the person involved and is not beneficial to the State or the industry.

State Procedures for Hiring Private Attorneys Need Improvement

The State's procedures for the hiring and compensation of private attorneys need improvement. There are no specific guidelines to define the scope of service undertaken, rate of compensation, what services are allowed for billing and billing procedures when the State retains private counsel to represent State agencies. The Council found this problem in its 1980 review of the Commission, however, no procedures have been adopted to correct this situation.

The Appropriation Act for FY 82-83 requires the Attorney General to approve the hiring and compensation of private counsel. The Council was told by the Attorney General's Office that it personally monitors the hiring and compensation of private attorneys, but no procedures to address the scope of service and the rate of compensation agreements have been implemented.

The State should have specific guidelines governing the hiring and billing schedules of private counsel for State Agencies. Furthermore, hourly billing costs should be itemized so that accountability will be provided to the State. The states of Georgia and North Carolina require that duration of appointment, a fixed hourly rate and type of services to be performed be outlined in a written agreement when hiring private counsel. Agencies, such as the Dairy Commission, which retain private counsel should define what services are to be performed and should know how much the service will cost. From FY 78-79 to FY 82-83, the Dairy Commission spent approximately \$60,000 on private legal services. This agreement should be written in a formal contract or through an exchange of letters.

Without standard procedures to define the term of service, rate of payment and what services are allowed for billing, the State cannot control the amount charged for services and may be paying excessive fees and unnecessary costs. Such procedures would also afford protection to both parties for services provided.

RECOMMENDATIONS

THE DAIRY COMMISSION SHOULD ESTABLISH
AUDIT PROCEDURES TO ENSURE AUDIT INDE-
PENDENCE AND RELIABILITY AND MINIMIZE THE
CHANCES OF UNDETECTED ERRORS OR IRREGU-
LARITIES BY ASSIGNING DIFFERENT MILK PRO-
CESSING PLANTS TO ITS AUDITORS EVERY MONTH.

THE COMMISSION SHOULD REEVALUTE ITS PURCHASE AND ASSIGNMENT OF A STATE-OWNED VEHICLE FOR ITS DIRECTOR'S USE. PURCHASE AND ASSIGNMENT OF A STATE-OWNED VEHICLE SHOULD BE BASED ON POLICIES OF THE DIVISION OF MOTOR VEHICLE MANAGEMENT.

THE COMMISSION SHOULD ASSIGN ITS NEW AUTOMOBILE TO THE DIVISION OF MOTOR VEHICLE MANAGEMENT AS AN "AGENCY POOL VEHICLE" TO BE USED BY ITS AUDITORS IN THE PERFORMANCE OF THEIR DUTIES.

THE STATE ATTORNEY GENERAL SHOULD ESTABLISH PROCEDURES FOR HIRING OF PRIVATE COUNSEL, THE SERVICES TO BE PERFORMED, THE DURATION, RATE OF COMPENSATION, WHAT SERVICES ARE ACCEPTABLE FOR PAYMENT AND BILLING PRACTICES SHOULD BE OUTLINED. THE APPROVAL SHOULD BE REVIEWED EACH YEAR.

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

The Dairy Commission is composed of ten members from both the milk industry and the public, and has established a practice of making its decisions public record. In its 1980 management review of the Dairy Commission, the Audit Council recommended that the statutes governing the Dairy Commission be amended to provide an equal number of consumer members and that one of the consumer members be an economist. Act 82 of 1981 specifies the Commission is to be composed of three producers, one distributor, one retailer, and five consumer members, not directly or indirectly involved in the production or distribution of milk. Currently, an economist serves as one of the consumer members. The five consumer representatives attended 74% and the industry members 86%, of the 17 Commission meetings held in 1981 and 1982. In November 1981, the Dairy Commission elected its first Chairperson who is also a consumer representative. The Chairperson told the Council that the Commission has an open door policy with the farmers, processors and the general public.

Although the Commission no longer publishes a public notice prior to each meeting because of the expense, it mails notices of hearings and meetings to members of the news media, agencies, and individuals of record requesting such notice. Also, hearing notices, in addition to being mailed to parties which may be affected directly by the subject under consideration at the hearing, are

published in the State Register which is filed with the Office of Clerk of Court in every county. Further, all producers and distributors are notified of Commission meetings and hearings through the mail.

Following any hearing conducted by the Commission, an announcement of the decision is made public and copies of it are mailed to all parties directly affected. Also, any person aggrieved by an interpretation or application of a regulation or order of the Commission can have a hearing before the Commission.

Three advisory committees, which represent consumers, producers and distributors were established by the Chairperson in April 1982, to encourage greater participation of the public, the industry and the commissioners themselves. The Consumer Advisory Committee was created to establish a liaison between the Commission and the consumers of the State. The Producer Advisory Committee consists of dairy farmers who will give information to the Commission on any industry-related matter, especially pricing matters. Additionally, the Professional Advisory Committee, which consists of leaders from professional organizations and dairy processors, will advise the Commission on possible problems in the industry. These were created in an effort to establish for the Commission an advisory board for advice and consultation on consumer and industry matters as they relate to milk marketing.

In a letter to the Council dated March 24, 1983, the Consumer Advocate said that the Commission's policy on public records has allowed his office and others to more fully understand the reasons behind decisions ultimately rendered by the Commission. The

Consumer Advocate said that the Commission is attempting to address both consumer and producer issues and, "such a process can only lead to greater public confidence in the actions taken by the Dairy Commission."

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL OR OTHER AGENCY OR ENTITY.

The Dairy Commission is authorized to regulate the marketing of Grade A milk. The Commission's function does not duplicate any services, functions or programs administered by any other State or other agency in South Carolina. However, the Federal Government through milk marketing orders also regulates minimum producer prices.

- (7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

An examination of the Commission's files and minutes shows that problems and issues confronting the industry and the public are being addressed; however, the Commission has no method of recording and tracking complaints. In addition, the Commission does not have a systematic procedure for the processing of complaints, and therefore, the Council could not ascertain the total

number of complaints received and processed by the Commission.

The following finding explains this problem in more detail.

Formal Procedures For Handling of Complaints Are Needed

The Dairy Commission has not established formal written procedures for the handling, documentation and resolution of complaints. The Commission does not maintain complaint documents or records adequately. Although a file of letters is maintained regarding problem issues, neither a standard complaint form nor a complaint log are maintained.

The Commission's staff told the Council that since it no longer has the authority to set resale prices, the number of complaints declined and the Commission did not develop formal procedures. In addition, the director told the Council that the Commission receives complaints by telephone, but no documentation was kept of these complaints. Furthermore, individual Commissioners receive complaints by phone or in person that are not formally recorded or responded to by the Commission.

Being responsive to complaints from the dairy industry and the public is essential for the Commission to fulfill its responsibility as the public's liaison to the dairy industry. Sections 39-33-90 through 39-33-110 of the 1976 South Carolina Code of Laws authorize the Commission to assess penalties against those who violate its laws, regulations and orders. A formal and thorough complaint process ensures an effective application of this authority.

In its 1980 Management and Performance Review of the Dairy Commission, the Council found that the Commission had not developed a systematic procedure for documenting and resolving complaints from the dairy industry and the public. However, the Commission continues to operate without formal procedures to handle these issues.

The Council's investigation found that the Commission does maintain a complaint file. Its file contained four written complaints, concerning retail and wholesale price of milk, which the Commission currently has no authority to regulate. However, upon examination of the Commission's correspondence files, individual distributor files and the minutes of meetings and public hearings, the Council also found references to other complaint and problem issues facing the dairy industry. Consequently, because of a lack of standard procedures for receiving, recording and tracking of complaints, a determination could not be made as to the total number of complaints received and processed by the Commission.

Since the Commission cannot determine the types of complaints received nor the extent of specific problems, possible violations of the law may go unaddressed and undetected. Without systematic procedures for handling complaints, the Commission is not provided with an orderly and efficient means to record and resolve the complex issues facing the industry. Inadequate responsiveness can undermine the industry's and the public's confidence in the Commission's ability to carry out its mandate and to effectively meet its responsibilities.

RECOMMENDATION

THE COMMISSION SHOULD DEVELOP FORMAL
WRITTEN PROCEDURES TO HANDLE COMPLAINTS.
THESE PROCEDURES SHOULD INCLUDE A STANDARD
COMPLAINT FORM AND A COMPLAINT LOG TO
RECORD AND TRACK PROBLEMS CONFRONTING
THE COMMISSION. AREAS THAT SHOULD BE
ADDRESSED IN THE LOG ARE COMPLAINANT;

NATURE OF COMPLAINT; DATE OF COMPLAINT
AND MEANS OF CONTACT; ACTION BY THE
COMMISSION, AND; FOLLOW-UP. COMPLAINT
PROCEDURES SHOULD BE INCLUDED IN THE
COMMISSION'S INTERNAL OPERATING PROCEDURES.

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY HAS COMPLIED
WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES
AND REGULATIONS.

The Dairy Commission has not complied with all applicable
State statutes and regulations. It has not licensed all individuals
who have engaged in the milk industry in the State. Also, the
Commission is unaware of the status of DHEC's health and sanitation
permits at the time of licensure issuance and has made no inquiry
about suspended or revoked health permits in the State's milk
industry. The following explains these problems in more detail.

Unlicensed Milk Producers Operating in the State

The Council found 125 of 536 (23%) producers engaged in fluid
milk sales in South Carolina are without a license to operate. Yet, the
Commission is allowing these producers to sell their milk to processors/
distributors and is collecting assessments based on these sales. Also,
the Commission has maintained producer milk bases for the State-wide
uniform production incentive plan for each of these unlicensed producers.

The Commission has not adequately pursued and enforced Section 39-33-90 of the 1976 South Carolina Code of Laws. In letters dated December 9, 1981 and June 29, 1982, the Commission notified all unlicensed producers to obtain the required license or "jeopardize" their base rights. However, no action was taken against those producers who did not become licensed and continued doing business in the State. The Commission's director told the Council that action was not taken because new regulations pertaining to Act 82 of 1981 had not been approved by the General Assembly.

However, Section 39-33-90 of the 1976 South Carolina Code of Laws states, "A distributor (as defined in Section 39-33-10) shall not engage, either directly or indirectly, in doing business in any market until he has applied for and obtained a license from the commission." According to the Commission's statute, persons violating any provision of this article shall be deemed guilty of a misdemeanor (Section 39-33-100). In addition, the statute gives the Commission the authority to apply to the court of common pleas for orders requiring compliance by persons failing or refusing to comply with the provisions of the Act.

Failure to enforce the licensing of all milk producers allows illegal milk operations in the State and the Commission is enforcing its statutes unequally among producers. Also, new producers may be encouraged to avoid being licensed by the State. Furthermore, producers who are unlicensed cannot be ensured they will receive the State's minimum producer price paid for Class I milk sales or a producer milk base under the State-wide uniform production incentive plan.

Additional Requirements For Licensure Needed

The Dairy Commission is granting licenses to operate and sell milk in South Carolina without knowing the sanitary conditions of milk facilities. The Dairy Commission does not know which producers or processors/distributors have violated health and sanitation regulations issued by the Department of Health and Environmental Control (DHEC). When it grants a license the Commission is unaware of the status of DHEC inspections or if actual inspections have been made.

The Dairy Division of the Department of Health and Environmental Control inspects and tests milk for regulatory standards of temperature, bacterial limits, antibiotics, pesticides and somatic cell counts. Permits are issued after inspections of dairy farms are made to ascertain if the processes of equipment assembly, sanitizing, pasteurization, cleaning and other procedures comply with DHEC's regulations. When any requirements or standards are violated, the applicant will not be entitled to receive and retain the health authority's permit.

In FY 81-82, 22 suspensions were issued by DHEC officials for violations of health and sanitation standards. According to DHEC's records, one in-State producer's permit was suspended on three different occasions and another producer's permit was suspended twice for infractions against DHEC's health and sanitary requirements. The Dairy Commission has no record of permit infractions. Also, the Commission's minutes do not disclose any discussion pertaining to these suspensions and no action was taken.

The Dairy Commission has made no inquiry to DHEC officials about suspended or revoked health permits in the milk industry. The Commission's director told the Council that pursuant to Act 82 no information

or requirement pertaining to health and sanitary conditions of dairy farms or milk plants was needed by the Commission. Currently, the only requirement for licensure is to fill out the Commission's application form. No license fee or renewal is required and the Commission has not refused a license for doing business in any milk market.

The Dairy Commission is charged with the regulation of milk marketing and licensure must be obtained before engaging in milk production, processing, marketing or handling. The Commission's statute does not require health and sanitation approval before licensure is granted to operate a dairy business. However, Section 39-33-90 of the 1976 South Carolina Code of Laws gives the Commission authority to suspend or revoke a license for violating DHEC's health and sanitation regulations.

The commission may decline to grant a license or may suspend or revoke a license already granted upon due notice and after a hearing before the commission whenever the applicant or licensee has violated regulations issued by the commission, health and sanitation regulations issued by the Department of Health and Environmental Control, or any provisions of this article.

Issuance and retainment of the Commission's licenses should be made only when DHEC has issued a permit for meeting health and sanitation conditions. Knowledge of health and sanitation permit violations are necessary for the Commission to carry out its statutory authority. If health and sanitary deficiencies exist or remain persistent, they present a danger to the public if milk from unsanitary facilities is marketed.

RECOMMENDATIONS

THE DAIRY COMMISSION SHOULD TAKE ACTION
AGAINST THOSE WHO ARE NOT COMPLYING WITH

THE STATE LAW. THE DAIRY COMMISSION SHOULD SEEK TO LICENSE ALL PERSONS ENGAGED IN PRODUCING AND SELLING FLUID MILK IN THE STATE OF SOUTH CAROLINA. THE COMMISSION SHOULD ENFORCE THE STATUTES BY APPLYING TO THE COURT OF COMMON PLEAS FOR ORDERS REQUIRING COMPLIANCE BY PERSONS FAILING OR REFUSING TO COMPLY WITH THE COMMISSION'S LAW.

THE COMMISSION SHOULD NOT MAINTAIN OR ASSIGN PRODUCER MILK BASES FOR UNLICENSED PRODUCERS.

THE DAIRY COMMISSION SHOULD REQUIRE ALL APPLICANTS FOR LICENSURE TO SUBMIT AN APPLICATION WITH A COPY OF THEIR VALID DHEC PERMIT.

THE DAIRY COMMISSION SHOULD ESTABLISH REGULATIONS TO REQUIRE THAT DHEC'S HEALTH AND SANITATION PERMITS BE RECEIVED AND RETAINED BY ALL MILK PRODUCERS IN SOUTH CAROLINA.

IN ORDER TO CARRY OUT ITS STATUTORY RESPONSIBILITIES, THE DAIRY COMMISSION SHOULD

ESTABLISH A PROCEDURE WITH DHEC FOR NOTIFYING
THE COMMISSION OF VIOLATIONS RESULTING IN
SUSPENSION OR REVOCATION OF HEALTH PERMITS.

IF PERSISTENT HEALTH AND SANITATION PROBLEMS
EXIST FOR A LICENSEE, THE DAIRY COMMISSION
SHOULD CONSIDER THE PROBLEM AND TAKE
APPROPRIATE ACTION.

APPENDICES

APPENDIX 1

SOUTH CAROLINA DAIRY COMMISSION

STATEMENT OF REVENUES AND EXPENDITURES

	<u>FY 78-79</u>	<u>FY 79-80</u>	<u>FY 80-81</u>	<u>FY 81-82</u>	<u>FY 82-83</u> (Estimated)
<u>Revenues</u> ¹					
Dairy Assessments:					
For Appropriated Expenditures	\$177,434	\$197,306	\$205,604	\$216,466	\$234,808
For Non-Appropriated Expenditures ²	--	--	--	31,854	29,424
For Indirect Cost to General Fund	--	--	--	4,264	4,264
License Fees ³	410	375	360	--	--
Carry Forward Balance of Prior Year ⁴	--	--	--	--	1,740
TOTAL	<u>\$177,844</u>	<u>\$197,681</u>	<u>\$205,964</u>	<u>\$252,584</u>	<u>\$270,236</u>
 <u>Expenditures</u>					
Personal Services	\$112,316	\$121,205	\$136,687	\$148,089	\$153,494
Travel	13,540	13,542	13,676	14,817	17,000
Telephone	2,333	1,746	1,874	2,282	1,800
Printing	1,023	846	713	289	800
Office Repairs	619	575	614	628	700
Other Contractual Services	12	35	81	--	1,740
Professional and Legal Fees	19,363	11,871	12,508	9,504	8,710
Office and Other Supplies	1,151	532	2,019	1,818	2,000
Motor Vehicle Equipment, Supplies and Repair	2,369	1,163	1,363	2,224	7,200
Postage	660	3,887	2,334	3,129	3,575
Rent - Real Property	7,000	7,832	8,804	8,804	10,945
Rent - Equipment	1,649	1,555	911	206	250
Insurance	190	190	125	120	200
Dues and Registration Fees	107	135	205	646	210
EDP Services	2,228	84	43	129	440
State Employer Contributions	<u>16,366</u>	<u>17,946</u>	<u>20,822</u>	<u>23,780</u>	<u>27,484</u>
Total Appropriated Expenditures	\$180,926	\$183,144	\$202,779	\$216,465	\$236,548
Indirect Cost to General Fund	--	--	--	4,264	4,264
Total Expenditures of General Fund	\$180,926	\$183,144	\$202,779	\$220,729	\$240,812
Non-Appropriated Expenditures	--	--	--	31,714	29,424
TOTAL	<u>\$180,926</u>	<u>\$183,144</u>	<u>\$202,779</u>	<u>\$252,443</u>	<u>\$270,236</u>
 FUND BALANCE of Dairy Account ¹	<u>--</u>	<u>--</u>	<u>--</u>	<u>\$ 141</u>	<u>-0-</u>
 <u>State Appropriation</u>	<u>\$185,524</u>	<u>\$197,403</u>	<u>\$205,602</u>	<u>\$219,140</u>	<u>\$234,808</u>

APPENDIX 1 (CONTINUED)

FOOTNOTES

¹In FY 78-79 through FY 80-81 Revenue amounts were credited to the General Fund. Beginning FY 81-82 assessments are deposited into the Dairy Commission Account and are transferred quarterly into the General Fund to cover expenditures. The balance of assessments remaining in the account (Fund Balance equalling the difference between Total Revenues collected and Total Expenditures) are carried forward and do not lapse into the General Fund.

²In FY 81-82, non-appropriated revenues were generated to cover costs of services rendered by Clemson University for developing an economic formula (\$9,214) and performing an annual cost study of producing milk in South Carolina (\$22,500). In FY 82-83, non-appropriated expenditures included Clemson's annual cost study of \$22,500 and a lump sum payment of \$6,924 for two Commission employees retiring June 30, 1983.

³Pursuant to Act 82 of 1981, the Commission no longer requires a fee for licensure.

⁴A balance of \$1,740 is carried forward from an old Dairy Commission Account and is budgeted for expenditure in FY 82-83.

Source: South Carolina Budget and Control Board, State Budget Documents, FY 78-79 to FY 82-83 and South Carolina Dairy Commission records.

APPENDIX 2
TYPES OF MILK CONTROL BY STATE
AS OF FEBRUARY 1983

State	Producer Level	Resale Level		Trade Practice Regulations
		Wholesale	Retail	
1. AL	F	-	-	-
2. AK	-	-	-	-
3. AZ	F	-	-	-
4. AR	F	-	-	S
5. CA	S	4/-	4/-	S
6. CO	F	-	-	S
7. CT	F	-	-	-
8. DE	F	-	-	-
9. FL	F	-	-	-
10. GA	F	-	-	S
11. HI	S	-	-	-
12. ID	F	-	-	S
13. IL	F	-	-	-
14. IN	F	-	-	-
15. IA	F	-	-	S
16. KS	F	-	-	S
17. KY	F	-	-	S
18. LA	1/-	-	-	S
19. ME	S	S	S	S
20. MD	F	-	-	-
21. MA	S	1/-	1/-	S
22. MI	F	-	-	-
23. MN	F	-	-	S
24. MS	F	-	-	-
25. MO	F	-	-	S
26. MT	S	S	S	S
27. NE	F	-	-	-
28. NV	S	1/-	S	S
29. NH	F	-	-	-
30. NJ	S	1/-	1/-	S
31. NM	F	-	-	-
32. NY	S	-	-	S
33. NC	S	1/2/-	1/2/-	S
34. ND	S	2/S	2/S	S
35. OH	F	-	-	-
36. OK	F	-	-	S
37. OR	S	-	-	-
38. PA	S	S	S	-
39. RI	F	-	-	-
40. SC	S	-	-	-
41. SD	F	-	-	-
42. TN	F	-	-	S
43. TX	F	-	-	-
44. UT	F	-	-	-
45. VT	1/-	1/-	1/-	S
46. VA	S	3/S	3/4/-	S
47. WA	F	-	-	-
48. WV	F	-	-	-
49. WI	F	-	-	S
50. WY	F	-	-	-

S = State; F = Federal; 1/ authorized but not used; 2/ maximum pricing authorized but not used; 3/ establishes maximum prices; 4/ authorized in the event of price disruption.

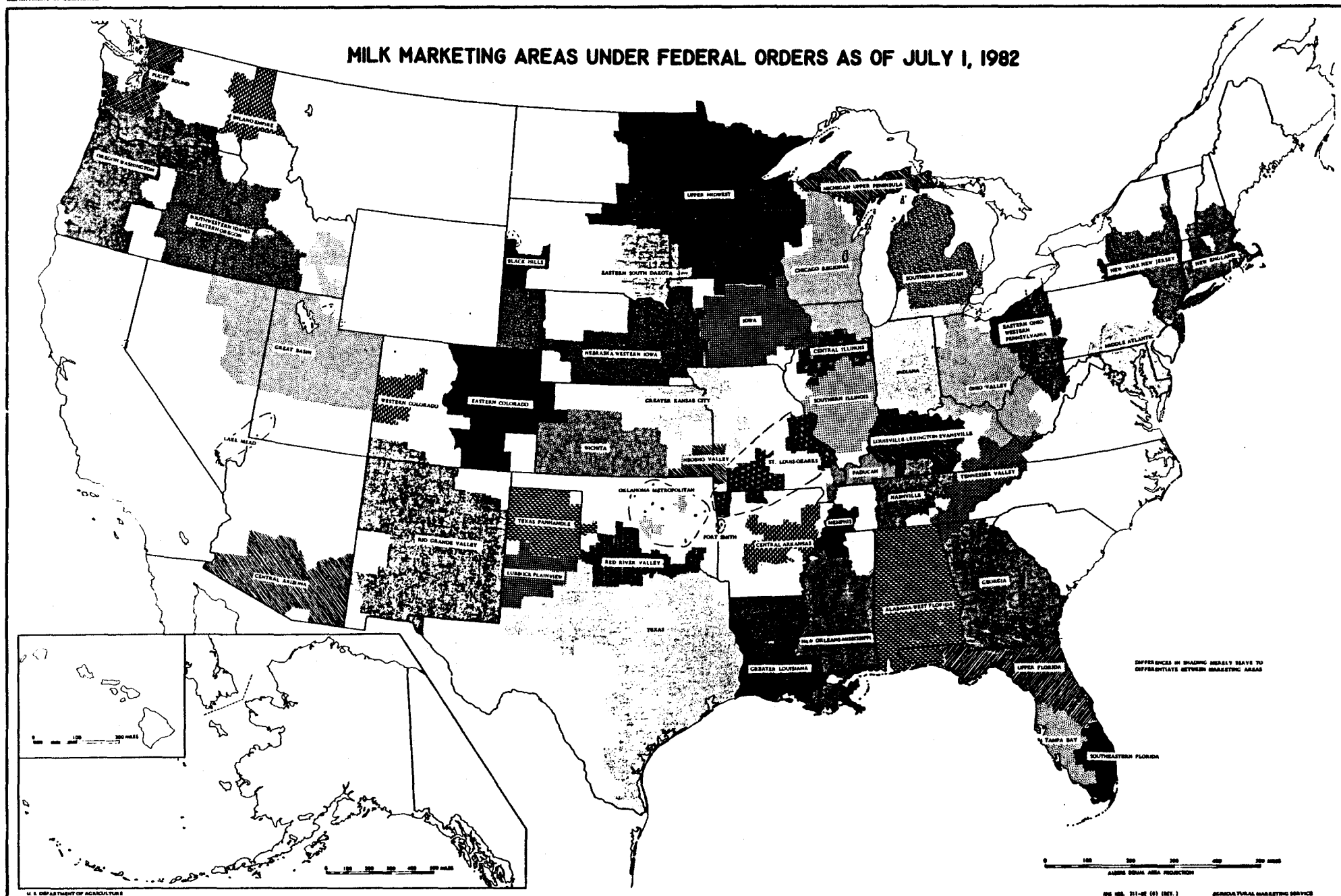
Source: U.S. Department of Agriculture, Agriculture Marketing Service, February 18, 1983.

APPENDIX 3

UNITED STATES
DEPARTMENT OF COMMERCE

BUREAU OF THE CENSUS

MILK MARKETING AREAS UNDER FEDERAL ORDERS AS OF JULY 1, 1982



Source: United States Department of Agriculture

APPENDIX 4

INDEX OF ILLUSTRATIONS

	<u>Page</u>
Table 1	Minimum Class I Milk Producer Price Set by the South Carolina Dairy Commission by Date 99
Table 2	Minimum Producer Prices Per Hundredweight Class I 3.5% Butterfat Milk December 1980 to March 1983 100
Table 3	A Comparison of Retail Prices of One Gallon of Class I 3.5% Butterfat Milk, 1982 Quarterly 101
Table 4	Milk Price Controls in the 50 State as of February 1983 104
Table 5	Dairy Commission Director's Permanently Assigned Vehicle Annual Costs and Mileage Driven FY 80-81 and FY 81-82 112
Appendix 1	South Carolina Dairy Commission Statement of Revenue and Expenditures 128
Appendix 2	Types of Milk Control by State as of February 1983 130
Appendix 3	Milk Marketing Areas Under Federal Orders as of July 1, 1982 131



SOUTH CAROLINA DAIRY COMMISSION

1026 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201CHARLES A. SHAW
DIRECTOR

August 9, 1983

TELEPHONE
(803) 758-2756

Mr. George L. Schroeder
Director
Legislative Audit Council
620 Bankers Trust Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

An exit conference in connection with Sunset Review of the State Dairy Commission by the Legislative Audit Council was held on August 2, 1983. Mrs. Betty Roper and Mr. Gaston Gee, the Chairman and Vice Chairman of the Commission, respectively, and I attended the conference on behalf of the Commission and read the draft of the audit report prepared by your staff.

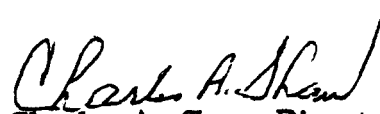
Basically, we did not detect any major debatable findings or conclusions in the report. There were some matters of minor import which we perceived differently from your staff, particularly with respect to the time frame and manner of licensing milk producers (dairy farmers), a new requirement of Act No. 82 of the 1981 Acts. The problem of timely licensing of producers was addressed by the Commission shortly after March 25, 1983, the effective date of its regulations implementing the above referred to Act. Also, appropriate practical measures will be instituted to insure written confirmation of a producer's compliance with the health and sanitary requirements of the Department of Health and Environmental Control applicable to Grade A milk producers.

We appreciate the recommendations of your staff which were made to improve the efficiency and cost effectiveness of the Commission's operations. They will be given due consideration by the Commission after receipt of the Audit Council's report.

Page 2 - Mr. George L. Schroeder - August 9, 1983

Mrs. Roper, as Chairman of the Commission during the course of the Review, has requested that I convey to you her appreciation and that of other members for the professional manner in which the members of your staff carried out their duties. Also, I would like to express my appreciation to Miss Bindewald and Mr. Milhous for their courtesies and efforts to minimize disruptions in our office procedures during the course of the Review.

Very truly yours,

A handwritten signature in cursive script, reading "Charles A. Shaw".

Charles A. Shaw, Director
South Carolina Dairy Commission

cc: All Members of the Commission

STATE CEMETERY BOARD

TABLE OF CONTENTS

	<u>Page</u>
<u>INTRODUCTION</u>	137
<u>BACKGROUND AND HISTORY</u>	138
<u>SUNSET QUESTIONS AND FINDINGS</u>	139
(1) ECONOMIC IMPACT	139
State Law Does Not Define Perpetual Care	140
Trust Fund Laws Need to be Revised	141
State Laws Concerning Cemetery Signs are Unclear	143
(2) TERMINATION OF AGENCY	145
The Board Does Not Adequately Protect the Public	145
(3) ADMINISTRATIVE COSTS	149
(4) ADMINISTRATIVE EFFICIENCY	149
Board Cannot Effectively Administer its Programs	150
Board's Fiscal Report is Inadequate	151
(5) PUBLIC PARTICIPATION	152
(6) DUPLICATION OF SERVICES	153
(7) HANDLING OF COMPLAINTS	153
(8) COMPLIANCE WITH THE LAW	155
<u>APPENDICES</u>	156
1 - Statement of Revenues and Expenditures	157
2 - State Cemetery Board's Annual Fiscal Report Form	158
3 - Board's Comments	159

INTRODUCTION

The South Carolina State Cemetery Board should be terminated in accordance with Act 608 of 1978. The Board has no staff and insufficient authority to properly regulate the industry it is charged with overseeing. The authority to regulate cemeteries should be vested with the State Board of Financial Institutions. Laws governing the operation of perpetual care cemeteries should be strengthened to provide adequate protection so that the public's financial investments will be protected.

BACKGROUND AND HISTORY

The South Carolina State Cemetery Board was created by Act 704 of 1954. Section one of the Act stated that cemeteries advertising perpetual or endowment care needed to be regulated. Through regulation, the State would "ensure the establishment of sound business practices necessary to furnish the perpetual care or endowment care guaranteed."

Along with this purpose of providing economic protection, the Act stated the need for regulation was based on the following fact to be true.

That there is no provision of law at the present time requiring the owner or operator of a perpetual care cemetery to establish any trust fund whatsoever, and unscrupulous operators can advertise and sell perpetual care lots and spaces without making any provision for the future furnishing of such services.

The Cemetery Board consists of four members who are nominated by the South Carolina Cemetery Association and appointed by the Governor for four-year terms. There are no limits to the number of terms a board member can serve. In addition, the Secretary of State serves as an ex-officio member and chairman. The Board has no staff and must rely on the part-time services of a secretary within the Secretary of State's Office.

By statute the Board is required to meet at least once a year and may require perpetual care cemeteries to obtain a license annually or biennially to operate. State law limits the license fee to a maximum of \$25 and charges the Board with the responsibility for auditing the books of each perpetual care cemetery once every two years. All other cemeteries are exempt from the law except for the requirement to display a sign (see p. 143). According to files maintained in the Secretary of State's Office, the Cemetery Board regulates 113 perpetual care cemeteries in South Carolina.

SUNSET QUESTIONS AND FINDINGS

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

According to files in the Secretary of State's Office, the State Cemetery Board is responsible for overseeing \$7,686,594 in cemetery trust funds. The purpose of these funds is to ensure that money will always be available to maintain those cemeteries advertising perpetual care.

The Audit Council attempted but could not determine the average cost for a gravesite in a perpetual care or other type of cemetery. Because of this, the Council cannot put a price estimate on the State's regulation of perpetual care cemeteries. However, by granting a graveyard a license to operate as a perpetual care cemetery, the State is giving that cemetery an advertising item it can use to sell its gravesites.

Since it must provide maintenance for eternity, that type of cemetery must recover enough funds from sales to build a self-perpetuating trust fund. Once sales have decreased or stopped, the trust fund must have enough money to support care and maintenance of the burial ground forever. This factor influences the price a perpetual care cemetery will charge for a gravesite.

A major problem with the State's regulation of perpetual care cemeteries is that its laws do not define what is perpetual care.

Another problem is the law does not adequately address the issue of maintaining trust funds and the requirement for cemeteries to display signs is unclear. These findings are explained in more detail below.

State Law Does Not Define Perpetual Care

Sections 39-55-10 through 39-55-120 of the 1976 South Carolina Code of Laws establish a regulatory board to oversee perpetual care cemeteries without defining standards for maintaining a cemetery. State law addresses only trust funds for perpetual care cemeteries in Section 39-55-30 but not what must be done to maintain proper care of a cemetery. During the 29 years of its existence, the Cemetery Board has never enacted regulations setting standards for the proper appearance of a perpetual care cemetery.

In reviewing the Board's files from 1973 to 1982, the Audit Council found eight complaints concerning the upkeep and appearance of perpetual care cemeteries. Although the Board has problems handling complaints (see p. 153), it has no statutory authority to set standards concerning the appearance or maintenance of a cemetery.

The Audit Council surveyed the nine other southeastern states, Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee and Virginia to learn how these states regulate cemeteries. Three of the states, Alabama, Mississippi and Virginia, do not have state agencies regulating cemeteries. Of the six states that regulate, five, Florida, Georgia, Louisiana, North Carolina and Tennessee, have state laws concerning paving of roads, appearance of the land and upkeep of cemeteries.

Without the authority to set standards, the Board has no means to enforce maintenance and appearance requirements on cemeteries. In addition, the State is authorizing businesses to advertise perpetual care without ensuring that the public will receive the service it paid for.

Trust Fund Laws Need to be Revised

South Carolina's laws governing the trust funds of perpetual care cemeteries need to be updated and revised. The initial deposit requirement is too low and the constraints placed on the use of the fund's income should be more specific and mandatory. In addition, the laws governing payments into the trust funds do not address issues such as cremation niches or mausoleums which are offered in perpetual care cemeteries.

Section 39-55-20 of the 1976 South Carolina Code of Laws requires a deposit of \$5,000 into a trust fund and Section 39-55-30 stipulates the fund shall be with a bank or trust company and irrevocable. The income from the fund is to be used for furnishing perpetual care and the law requires a payment of \$6 per grave space or 10% of the sales price, whichever is greater, into the funds within 90 days of a final payment on a gravesite. These laws have remained the same since their enactment in 1954.

The six southeastern states which regulate cemeteries, Florida, Georgia, Kentucky, Louisiana, North Carolina and Tennessee, have more stringent and encompassing requirements concerning trust funds. All of the states include mausoleums, burial niches and columbaria in their cemetery laws. Florida requires an initial deposit of \$25,000 and payment of 10% of the retail cost on all sales of graves, crypts, etc. Georgia requires a \$10,000 deposit, a 10% payment on gravespaces and a

5% payment on mausoleum crypts. Kentucky uses a range of \$10,000 to \$25,000 depending upon the population of the county where the cemetery is located. The state requires payment of 20% of the gross selling price of a grave and 5% for crypts. Louisiana also uses a range from \$5,000 to \$25,000 again based on a county's population. The state requires 10% payments on graves and crypts. North Carolina requires a \$15,000 initial deposit and payments of \$25 per gravesite and \$45 per crypt. Tennessee uses a range of \$10,000 to \$50,000 depending upon a county's population and it requires a 20% payment on the full payment price of a grave and 10% of the full payment for a crypt.

To determine if cemeteries are maintaining adequate trust fund amounts the Audit Council collected data reported to the Secretary of State's Office. This provided information on the size of the trust funds maintained by the State's 113 perpetual care cemeteries. To learn if these funds were sufficient to provide perpetual care, the Council tried to determine an average cost of maintaining a cemetery in South Carolina but was unable to do so. The Board did not have, nor was the Council able to obtain, data concerning the sizes, operational costs or number of graves sold. Without this type of data, comparative analysis cannot be performed and it cannot be determined how much money is needed to maintain a cemetery of a certain size in a particular area. Also, it cannot be determined how much money will be needed to furnish perpetual care once a cemetery has sold all of its gravesites. As an example, there are 18 perpetual care cemeteries in the State, founded between 1954 and 1973, which have less than \$17,500 in their trust funds, ten have less than \$10,000.

In comparison to the southeast, South Carolina has the smallest initial deposit requirement and its trust fund laws are not as extensive. Also, the Board is not collecting sufficient information about cemeteries before it grants a license to operate. Without this information, the Board cannot decide whether the cemetery will be a viable business operation. Under the present system of governing trust funds, the State cannot ensure that cemeteries will have enough money to provide care for eternity.

State Laws Concerning Cemetery Signs is Unclear

Section 39-55-20 of the 1976 South Carolina Code of Laws is unclear in requiring all cemeteries in the State, except family burial grounds, to display signs. The law requires all cemeteries to display signs in six-inch lettering, stating that a cemetery is either, "Perpetual Care," "Endowment Care," "No Perpetual Care" or "No Endowment Care."

No State agency or private organization could tell the Audit Council how many cemeteries exist in South Carolina. The Cemetery Board has no staff to investigate the number, location and management of every cemetery in the State and has no authority to do so. State law only gives the Board authority to require a trust fund and to license and audit perpetual care cemeteries.

However, Section 39-55-20 of the 1976 South Carolina Code of Laws states:

All cemeteries in this State, except family burial grounds, shall display a sign at each entrance, containing letters not less than six inches in height, stating "Perpetual Care" or "Endowment Care," or "No Perpetual Care" or "No Endowment Care," dependent upon whichever method of operation the cemetery is using... [Emphasis Added]

This Section contradicts the provision of Section 39-55-120 which exempts, "municipally owned," "eleemosynary," "church" or "family burying grounds" from State regulation.

As written, South Carolina law governing cemeteries could be confusing as to the Board's actual jurisdiction. The statutes are also unenforceable since they appear contradictory. As it is now written, the law is an unnecessary intrusion into the management of church and other cemeteries not advertising perpetual care.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER
ENACTING LEGISLATION THAT REQUIRES STANDARDS
BE ESTABLISHED FOR THE UPKEEP AND APPEARANCE
OF PERPETUAL CARE CEMETERIES.

THE GENERAL ASSEMBLY SHOULD CONSIDER
REVISING SECTIONS 39-55-30, 39-55-40 AND 39-55-50
OF THE 1976 SOUTH CAROLINA CODE OF LAWS TO
RAISE THE LIMIT FOR AN INITIAL DEPOSIT AND
TO INCLUDE REGULATION OF MAUSOLEUMS,
BURIAL NICHEs AND COLUMBARIA IN THE STATE
CODE.

THE GENERAL ASSEMBLY SHOULD CONSIDER
REVISING SECTION 39-55-20 OF THE 1976 SOUTH
CAROLINA CODE OF LAWS TO ALLOW ONLY
CEMETERIES LICENSED AS PERPETUAL CARE TO
DISPLAY SIGNS ADVERTISING SUCH CARE.

(2) WHAT ECONOMIC, FISCAL AND OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

There would be no measurable fiscal or other impact if the Cemetery Board was terminated. Its statutes do not grant the Board sufficient authority to properly regulate the industry and limits its ability to generate enough revenue to support an investigatory staff. In its 29 years, the Board has never audited the books of a cemetery and only in the years 1969 to 1970 did it attempt to establish an inspection program using Board members as investigators. When a cemetery incorporates and establishes a trust fund, the Board issues a license. Once this is accomplished, the Board only receives an annual financial statement, collects a \$25 fee and issues a license. As it now operates, the State has little assurance that the public's financial investments are being protected. This is explained in more detail below.

The Board Does Not Adequately Protect the Public

The Cemetery Board does not adequately protect the public's fiscal welfare. It does not provide adequate assurance that perpetual care cemeteries are maintaining their trust funds and properly caring for their grounds and facilities.

Section 39-55-80 of the 1976 South Carolina Code of Laws limits the Board's ability to generate sufficient revenue to support a staff to investigate cemeteries and audit their books. As an example, in FY 81-82 the Board's appropriation totaled \$2,562 (see Appendix 1). Also, the

Board's enabling legislation does not grant it authority to set standards for maintenance, investigate cemeteries or to revoke or suspend a license.

An Audit Council survey of the nine other southeastern states found that the six states which regulate cemeteries have staffs to investigate and enforce laws. Only two states, Louisiana and North Carolina, have independent regulatory boards. Louisiana has a seven-member board and a staff of two housed in the State's Department of Commerce. This board is responsible for overseeing 1,100 cemeteries, however, only 95 are perpetual care which must maintain trust funds. The Board's FY 82-83 budget of \$80,000 is derived from fees charged to all cemeteries. North Carolina's seven-member board has a staff of three which operates under the Department of Commerce. It regulates 160 perpetual care cemeteries and its \$85,000 FY 82-83 budget is generated from license and other fees. The remaining four states, Florida, Georgia, Kentucky and Tennessee regulate cemeteries through various state agencies. These agencies are responsible for examining banks, savings and loan associations, loan companies, trust companies and other financial institutions. The cost of these operations are from fees and revenue from the states' general funds.

In South Carolina, the Board of Financial Institutions has the responsibility of approving the establishment and supervising the operation of State chartered banks, building and loan associations, cash depositories, credit unions and consumer finance companies. This board was established in 1936 and has seven representatives from the various financial institutions, a public member and its chairman is the State Treasurer.

The Board's Examining Division has 25 positions and employs bank examiners who test the accuracy and validity of a financial institution's files and records, verifies accounts and determines the safety and soundness of its assets, management policies and compliance with laws. This division also administers the State's pre-need burial law and contracts. This division could assume the duty of auditing perpetual care cemeteries with the addition of one Bank Examiner I position at a salary cost of \$18,111 including fringe benefits.

Although South Carolina has a State Cemetery Board, its operation is similar to the states which do not regulate cemeteries, Alabama, Mississippi and Virginia. These states do not investigate cemeteries or examine their books and they leave the accounting of funds to the cemeteries and their trustees. Any reporting of trust funds is made to local officials. South Carolina also does not investigate or audit books and leaves the reporting of trust funds to the cemeteries who submit an annual fiscal report (see p. 151). South Carolina differs only in that perpetual care cemeteries report to a state official.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER
TERMINATING THE STATE CEMETERY BOARD IN
ACCORDANCE WITH ACT 608 OF 1978. THE AUTHORITY
AND DUTY TO REGULATE AND EXAMINE PERPETUAL
CARE CEMETERIES SHOULD BE VESTED WITH THE
STATE BOARD OF FINANCIAL INSTITUTIONS.

THE BOARD OF FINANCIAL INSTITUTIONS SHOULD BE CHARGED WITH ENACTING REGULATIONS AND EXAMINING PERPETUAL CARE CEMETERIES TO ENSURE COMPLIANCE WITH STATE LAW AND TO TEST THE SOUNDNESS OF CEMETERY TRUST FUNDS UNDER ITS JURISDICTION.

THE GENERAL ASSEMBLY SHOULD CONSIDER CREATING ONE STAFF MEMBER FOR THE BOARD OF FINANCIAL INSTITUTIONS TO HAVE SUFFICIENT PERSONNEL TO INVESTIGATE CEMETERIES AND EXAMINE THEIR RECORDS.

THE GENERAL ASSEMBLY SHOULD CONSIDER REVISING SECTION 39-55-80 OF THE 1976 SOUTH CAROLINA CODE OF LAWS CHANGING THE MAXIMUM FEE THAT CAN BE CHARGED FOR LICENSING AND ALLOWING THE BOARD OF FINANCIAL INSTITUTIONS TO SET OTHER FEES AS IT DEEMS NECESSARY. REVENUE FROM THIS SOURCE CAN BE USED TO OFFSET THE COST OF AN ADDITIONAL STAFF MEMBER FOR THE BOARD.

THE GENERAL ASSEMBLY SHOULD CONSIDER REVISING THE 1976 SOUTH CAROLINA CODE OF LAWS CONCERNING CEMETERIES TO ALLOW THE BOARD OF FINANCIAL INSTITUTIONS THE

AUTHORITY TO INVESTIGATE A CEMETERY PRIOR
TO LICENSING AND TO REVOKE OR SUSPEND A
LICENSE.

- (3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF
THE AGENCY UNDER REVIEW.

The Board has no staff and must rely on the part-time services of a secretary in the Secretary of State's Office. It is self-supporting through license fees collected and deposited in the General Fund. Its largest expenditures have been for personal services, per diem, travel and postage. From FY 78-79 to FY 81-82, the Board's revenue increased from \$2,720 to \$2,925 while its expenditures decreased from \$2,521 to \$2,158. In FY 82-83, the Board estimated it would receive \$3,000 in fees while expenditures would be \$2,562 (see Appendix 1).

- (4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE
PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

Since the Board has no staff, its ability to adequately administer its program is seriously impeded. By law the Board is charged with auditing the books of perpetual care cemeteries every two years but has never done so. Instead, the Board publishes and sends its own fiscal report form to the cemeteries. According to law, this form is to be completed and signed by a certified public

accountant (see Appendix 2). In its review, the Council noted problems with the lack of staff and the Board's financial report. This is explained in more detail below.

Board Cannot Effectively Administer its Programs

The State Cemetery Board cannot effectively administer its programs because it lacks staff. By law the Board is limited to a maximum fee it can charge cemeteries and it has no other revenue generating authority written into its enabling legislation. In addition, the State has 113 perpetual care cemeteries from which to draw revenue. It does not know the size, financial condition or amount of money these cemeteries can generate to support an operation similar to Louisiana or North Carolina.

Of the six states in the southeast which regulate cemeteries, only Louisiana and North Carolina are self-supporting. Louisiana has 1,100 cemeteries under its jurisdiction and North Carolina has 160. These states charge higher fees than South Carolina and also charges for items such as mausoleums, burial niches, columbaria, fees for penalties and other fees. The other four states did not generate enough revenue from cemetery fees to pay the costs of regulation. These states used general fund revenues and fees from other regulated industries to offset the cost of cemetery regulation.

In order to effectively administer a program of regulating perpetual care cemeteries, the State must have personnel assigned to investigate and examine them. Without this staff support, the State cannot ensure its citizens they are being protected from "unscrupulous" cemetery operators.

Board's Fiscal Report is Inadequate

The annual fiscal report form and procedures used by the Cemetery Board are inadequate to effectively monitor perpetual care trust funds. The form only shows a cemetery's total amounts during its fiscal year, the total for the beginning of the year, total sales made during the year, the amount deposited and the total at the end of the year. This form should be signed by a CPA and filed within 30 days of a cemetery filing its income tax statement.

During its review the Council found that 66 (58%) of the State's 113 cemeteries were late filing their statement for 1982. Also, from examining the latest available statements the Council discovered that 40 (35%) of the cemeteries were not using CPA's to file and sign their statements. The Board also does not receive CPA financial statements or reports from the trustees who manage the funds for the cemeteries. The Council learned that some banks will voluntarily send a report to the Board but there is no law or rule and regulation requiring financial reports.

In the southeast, Florida, Georgia, Kentucky, Louisiana, North Carolina and Tennessee all require trustees to file annual trust fund reports and cemeteries are required to submit detailed sales and financial reports. These states use these reports to audit the records and compare their findings with the books maintained by the cemeteries under regulation.

The 1976 South Carolina Code of Laws does not address the issue of what records should be kept by cemeteries. Section 39-55-80 states that the Board must audit the books of a cemetery at least once every two years or that it can accept a "sworn statement" from a licensed

CPA. The Board has used this provision to accept its annual report in lieu of actually examining books or financial records of the cemeteries or requiring submission of standard CPA audits. In April 1983 the Board enacted new regulations which allow the annual statement be signed by a licensed public accountant and extended the reporting periods to 90 days.

Without staff to conduct examinations and sufficient records to audit, the Board cannot ensure the fiscal solvency of the trust funds it oversees. Since it does not have these capabilities it cannot protect the fiscal welfare of those citizens who purchase gravesites in perpetual care cemeteries.

RECOMMENDATION

THE BOARD CHARGED WITH REGULATING CEMETERIES
SHOULD ENACT RULES AND REGULATIONS REQUIRING
CEMETERIES TO MAINTAIN FILES AND RECORDS
FOR EXAMINATION AND TO SUBMIT MORE DETAILED
REPORTS ON THEIR FINANCIAL OPERATIONS.

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

No public members sit on the State Cemetery Board and it meets only once a year. Section 39-55-60 of the 1976 South Carolina Code of Laws states that the South Carolina Cemetery Association

shall nominate members to the Board while the Governor shall appoint the members. In Louisiana and North Carolina these states' cemetery boards have two public members each. Should the General Assembly put the cemetery authority under the Board of Financial Institutions, this board has a consumer member.

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL OR OTHER AGENCY OR ENTITY.

The Board does not duplicate the functions or services administered by any other State, Federal or other entity.

- (7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATIONS AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

The Council reviewed the Board's minutes, correspondence and other files and found a problem with the handling of complaints. Along with no staff (see p. 138) nor authority (see p. 140) to effectively enforce rules or answer complaints, the Board has no central file or log to record complaints. Examining the Board's minutes and correspondence files and the State Consumer Affairs files, the Council identified 36 possible complaints lodged between 1972 and 1983.

There were two reasons for the Board's problems with complaint handling: (1) there are no written procedures or policies developed to process complaints, and (2) the Board does not keep a log or have a central record-keeping system for complaints. When complaints are received by the Board they are not logged or filed in a central location. Instead, the Secretary of State will answer an inquiry and file a copy in an individual folder.

RECOMMENDATION

THE BOARD CHARGED WITH OVERSEEING CEMETERIES SHOULD DEVELOP FORMAL WRITTEN PROCEDURES TO HANDLE COMPLAINTS. THESE PROCEDURES SHOULD INCLUDE A STANDARD COMPLAINT FORM AND A COMPLAINT LOG TO RECORD AND TRACK PROBLEMS CONFRONTING THE INDUSTRY. AREAS THAT SHOULD BE ADDRESSED IN THE LOG ARE COMPLAINANT; NATURE OF COMPLAINT; DATE OF COMPLAINT AND MEANS OF CONTACT; ACTION BY THE BOARD; AND, FOLLOW-UP. COMPLAINT PROCEDURES SHOULD BE INCLUDED IN THE BOARD'S INTERNAL OPERATING PROCEDURES.

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

A problem noted by the Council during its investigation was the lack of a unified Section in the 1976 South Carolina Code of Laws governing cemeteries in South Carolina. Along with the laws establishing the Cemetery Board, the State has ten different Sections dealing with cemeteries. None of these laws are brought together under one authority.

The State has laws concerning the destruction or mutilation of graves, bequests for care of cemeteries, removal of abandoned graveyards, flooding of graveyards, condemnation of burial property, access to safe deposit boxes to obtain gravesite deeds and the location of dance halls near cemeteries. In the six states which regulate cemeteries, all laws pertaining to graveyards are combined under one Section.

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER
COMBINING ALL STATUTES CONCERNING
CEMETERIES UNDER ONE AUTHORITY IN THE
STATE.

APPENDICES

APPENDIX 1

STATE CEMETERY BOARD

STATEMENT OF REVENUES AND EXPENDITURES

FY 78-79 THROUGH FY 82-83

	<u>FY 78-79</u>	<u>FY 79-80</u>	<u>FY 80-81</u>	<u>FY 81-82</u>	<u>FY 82-83</u> (Estimated)
<u>Revenues</u>					
License	\$2,720	\$2,225	\$2,850	\$2,925	\$3,000
TOTAL	<u>\$2,720</u>	<u>\$2,225</u>	<u>\$2,850</u>	<u>\$2,925</u>	<u>\$3,000</u>
 <u>Expenditures</u>					
Personal Services	\$ 900	\$ 900	\$ 900	\$ 900	\$ 900
Per Diem - Board	245	140	140	140	400
Office Supplies	0	0	0	0	50
Postage	1,045	800	500	888	773
Travel	235	143	108	123	315
Employee Benefits	<u>96</u>	<u>98</u>	<u>100</u>	<u>107</u>	<u>124</u>
TOTAL	<u>\$2,521</u>	<u>\$2,081</u>	<u>\$1,748</u>	<u>\$2,158</u>	<u>\$2,562</u>
 <u>State Appropriation</u>	<u>\$2,551</u>	<u>\$2,621</u>	<u>\$2,621</u>	<u>\$2,562</u>	<u>\$2,562</u>

Source: State Budget Documents, FY 78-79 to FY 82-83, State Budget and Control Board.

SOUTH CAROLINA STATE CEMETERY BOARD

In the Office of Secretary of State
Wade Hampton Office Building — Columbia, S. C.

Date of Audit _____

1. Name of Cemetery _____ Date Established _____

2. Business Address _____

3. Circle Type of Organization — Corporation — Partnership — Individual Owner

4. State acreage sold under (perpetual care _____)

(Nonperpetual care _____)

5. If both types are sold are they clearly differentiated by signs? _____

6. Name and address of Firm handling Trust Fund: _____

Signature of Officer

Statement of Certified Public Accountant
Covering Irrevocable Trust Fund

Fiscal Year Ends _____

8. Amount in Fund at close of past fiscal audit (shown on last statement) _____ \$ _____

9. Spaces selling for \$60.00 or less per grave space:

a. Number paid for between close of last fiscal audit and the end of current fiscal audit —

Number _____ Times \$6.00: _____ \$ _____

10. Spaces selling for more than \$60.00 per grave space:

a. Selling prices of lots on which final payment was received between close of last fiscal audit

and end of this audit — \$ _____ Times 10%: _____ \$ _____

11. Total Payments Due Perpetual Care Fund _____ \$ _____

12. Actual Payments made to Trust Fund during period covered by this audit _____ \$ _____

13. Amount in fund as of the date of this audit (Line 8 plus Line 12) _____ \$ _____

14. If amount shown in Line 12 is less than that shown in Line 11, explain difference.

I, _____, a Certified Public Accountant, have examined the books of the above named Company and believe the above information to be true and correct and in accordance with the requirements of Act 704 of the 1954 General Assembly.

Date _____

State of South Carolina

Department of State

P.O. BOX 11350
COLUMBIA 29211

August 10, 1983

JOHN T. CAMPBELL
SECRETARY OF STATE

JOHN P. STOKES
DEPUTY SECRETARY OF STATE

STANLEY V. LEWIS
DEPUTY SECURITIES COMMISSIONER
816 Keenan Building

ERIC W. PANTSARI
DIRECTOR, PUBLIC CHARITIES
816 Keenan Building

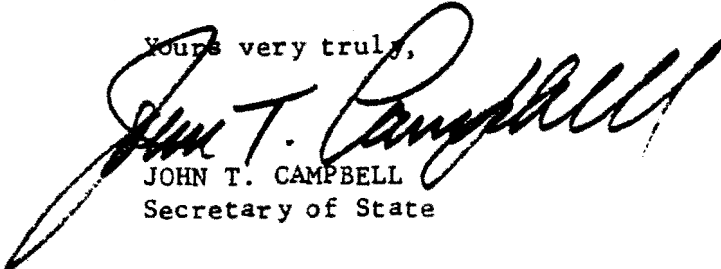
Mr. George L. Schroeder
Legislative Audit Council
620 Bankers Trust Tower
Columbia, S. C. 29201

Dear Mr. Schroeder:

I have this day read the report concerning the South Carolina Cemetery Board prepared by your Mr. Carroll Allen and feel this is a true picture of the problems facing this agency.

If we can be of any further service to you, please let us know.

Yours very truly,


JOHN T. CAMPBELL
Secretary of State

JTC/er

BUILDING CODE COUNCIL

TABLE OF CONTENTS

	<u>Page</u>
<u>INTRODUCTION</u> . . . . .	.162
<u>BACKGROUND AND HISTORY</u> . . . . .	.163
<u>SUNSET QUESTIONS AND FINDINGS</u> . . . . .	.165
(1) ECONOMIC IMPACT . . . . .	.165
(2) TERMINATION OF AGENCY . . . . .	.165
(3) ADMINISTRATIVE COSTS . . . . .	.167
(4) ADMINISTRATIVE EFFICIENCY . . . . .	.168
No Established Criteria to Base Decisions . . . . .	.168
(5) PUBLIC PARTICIPATION . . . . .	.170
(6) DUPLICATION OF SERVICES . . . . .	.170
(7) HANDLING OF COMPLAINTS . . . . .	.171
(8) COMPLIANCE WITH THE LAW . . . . .	.172
Chairman Acted Without Council . . . . .	.172
<u>APPENDIX</u> . . . . .	.174
1 - Council's Comments . . . . .	.175

INTRODUCTION

The Legislative Audit Council has determined that the Building Code Council should be terminated as provided by Act 608 of 1978. Under the Sunset Law, a board should be continued if it is determined to meet a public need. The Building Code Council's existence as an independent regulatory board does not meet this criteria, nor is it justified by its limited authority and low level of activity.

The Building Code Council's authority can be assumed by the Director of the Office of Building Codes and Regulatory Services within the Division of General Services of the State Budget and Control Board. This can be done at no additional cost to the State. This office currently provides the Council with administrative and clerical assistance, and its Director is responsible for the overall administration and enforcement of policy for the Boards of Barrier Free Design, Manufactured Housing and the Pyrotechnic Safety.

BACKGROUND AND HISTORY

The South Carolina Building Code Council was created by Act 1415 of 1972 and consisted of 12 members appointed by the governor for six-year terms. In 1978, the Council was increased from 12 to 13 members by adding a representative of the handicapped. The Council includes an architect, representatives from the Municipal Association, the Association of Counties, the Building Officials' Association, the South Carolina Trade Council, the electric utility industry, the Carolina Branch of the Associated General Contractors, the gas, electric and plumbing industries, the Home Builders Association and the Chief Engineer of the State Budget and Control Board. According to Act 1415, the members serve without pay and receive no per diem, mileage or subsistence. However, in 1978, by Act 629, mileage is provided those members who live more than 25 miles from the Council's meeting place.

The Act creating the Council authorizes cities and counties to adopt only the latest editions of the Standard Building Code, Standard Housing Code, Standard Gas Code, Standard Plumbing Code, Standard One and Two Family Dwelling Code, National Electric Code, Standard Mechanical Code, Standard Fire Prevention Code, Standard Swimming Pool Code, Standard Excavation and Grading Code, and the National Fire Protection Association Gas Codes. Should any municipality or county contend that these codes do not meet their needs due to physical or climatological conditions, variations and modifications to the codes are submitted to the Council for approval. Approval of these modifications is the Council's only authority, and its primary function is to decide to what extent any jurisdiction may vary from these codes in the establishment of standards.

The Council has been located in the State's Division of General Services since 1978. The Office of Building Codes and Regulatory Services of General Services houses the Council along with the Boards of Barrier Free Design, Manufactured Housing and Pyrotechnic Safety. This office provides clerical and administrative assistance to the Council.

SUNSET QUESTIONS AND FINDINGS

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The functions of the South Carolina Building Code Council do not directly affect the cost of code enforcement in South Carolina. The Audit Council was unable to find any measurable cost increases or reductions as a direct result of the existence or actions of the Council.

- (2) WHAT ECONOMIC, FISCAL AND OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Building Code Council does not operate as a regulatory board. It does not have the authority to examine, license, enforce its rules and regulations and raise its own revenues. According to the State's "Sunset" Law a regulatory board should continue to exist if it is determined to be necessary to protect the public's health, safety or welfare. After examining the Building Code Council's law and operations, the Audit Council concludes that the Building Code Council should be terminated as provided by Act 608 of 1978.

There would be no measurable economic, fiscal or other impact should the Building Code Council be terminated. The Building Code Council's primary responsibility is to decide to what extent any local jurisdiction may vary from the Standard Codes authorized in Section 6-9-60 of the 1976 South Carolina Code of Laws. This report only focuses on this specific authority and does not discuss building codes or the problems of code enforcement.

Since the Council's creation in 1972, it has met only ten times to consider four requests for modifications. Of these, two were approved, one denied and one sent back to the local board of adjustments and appeals for a decision. Since the Council's authority is so restricted there would only be a minimal effect of termination. The Council's existence as an independent regulatory board does not meet the criteria set out in the Sunset Law for continuation, nor is it justified by its low level of activity.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER
TERMINATING THE BUILDING CODE COUNCIL AS
PROVIDED BY ACT 608 OF 1978. ITS AUTHORITY
SHOULD BE TRANSFERRED TO THE DIRECTOR OF
THE OFFICE OF BUILDING CODES AND REGULATORY
SERVICES WITHIN THE DIVISION OF GENERAL
SERVICES.

TO ASSIST HIM, THE DIRECTOR SHOULD BE
GIVEN THE AUTHORITY TO CALL AN ADVISORY

COMMITTEE WHENEVER A JURISDICTION SUBMITS A REQUEST FOR A MODIFICATION. THIS COMMITTEE SHOULD BE MADE UP OF ONE BUILDING OFFICIAL FROM EACH OF THE SIX CONGRESSIONAL DISTRICTS AND ONE ARCHITECT CHOSEN BY THE DIRECTOR AND THE STATE ENGINEER. THE INDIVIDUALS ON THE ADVISORY COMMITTEE SHOULD SERVE FOR FOUR-YEAR TERMS AND THEIR EXPENSES SHOULD BE REIMBURSED IN ACCORDANCE WITH STATE BUDGET AND CONTROL BOARD REGULATIONS.

- (3) DETERMINE THE OVERALL COST, INCLUDING MANPOWER OF THE AGENCY UNDER REVIEW.

The Building Code Council did not generate revenue and was funded from the budget of the Division of General Services. Members of the Council served without pay, per diem or subsistence. As authorized by Act 629 of 1978, mileage is paid by the State's General Fund to those members who live or work more than 25 miles from the meeting place. Act 629 also provides that the Division of General Services supply the necessary clerical and administrative assistance for the Council to perform its functions.

There have been minimal Council expenses for postage, stationery and telephone. Funds expended for mileage were the only direct expenditures that could be determined by the Audit

Council. Mileage expenditures for the Building Code Council from 1979 to 1983 totaled \$742.

(4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

Although the Building Code Council was authorized by Section 6-9-60 of the 1976 South Carolina Code of Laws to adopt rules and regulations, it never adopted rules and regulations for the administration of its authority. Additionally, the Council has never adopted policies and procedures for its operation. Furthermore, criteria by which it approved or denied a modification have not been established by the Council. This is discussed in detail below.

No Established Criteria to Base Decisions

The Building Code Council never developed written procedures or regulations for its operation and the application of its authority. It did not adopt procedures which establish specific criteria on which it should base an approval of proposed modifications.

The Council's chairman told the Audit Council that because the Building Code Council is made up of individuals with technical expertise, decisions to grant or deny modifications have been based on the Council members' professional knowledge. Therefore, during the Council's existence it did not develop such procedures or regulations and has neglected to establish a formal standard policy on which to base its decisions.

The Building Code Council is given the authority to adopt rules and regulations by Section 6-9-60 of the 1976 South Carolina Code of Laws. The Council of State Governments has developed a Model State Building Code Act which specifies that a jurisdiction must meet five criteria for the approval of modifications. The five criteria state:

- 1) The ordinance should be sufficiently consistent with the standard building codes so that its application will not substantially reduce uniformity of building regulations;
- 2) The ordinance does not discriminate against particular technologies, techniques or materials;
- 3) The ordinance does not unnecessarily increase the cost of construction in the jurisdiction;
- 4) The ordinance is the current edition of a nationally recognized model building code; and
- 5) Enforcement of the ordinance is necessary to protect the public health, safety and welfare within the applicable jurisdiction.

The Council's decisions to grant or deny a local jurisdiction's modification was subjective and not based on specific criteria. Because it did not have standard procedures and regulations, the Council did not provide an orderly means for effective and unbiased decision making.

RECOMMENDATION

IF THE COUNCIL IS TERMINATED BY ACT 608 OF 1978, THE DIRECTOR OF THE OFFICE OF BUILDING CODES AND REGULATORY SERVICES, WITH THE ASSISTANCE OF HIS ADVISORY COMMITTEE, SHOULD ADOPT STANDARD PROCEDURES AND REGULATIONS FOR GRANTING OR DENYING MODIFICATIONS.

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

The Building Code Council did very little to encourage public participation. There were no consumer representatives on the Council and its minutes indicate that consumers did not attend any meetings. In addition, because the Council never promulgated rules and regulations or held public hearings, notice of meetings were never published in the State Register nor in newspapers, as required by the Administrative Procedures Act. The Council did post notices of its meetings in the General Services Building, and notified involved parties when meetings were scheduled for consideration of requested modifications to the codes.

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL OR OTHER AGENCY OR ENTITY.

The Council's authority to approve variations and modifications submitted to it by any city or county is not duplicated by any other State or Federal agency. However, because there has been very little activity by the Council exercising this authority, there is little justification for the continuation of the Council as an independent regulatory board to provide this service.

Although no other agency duplicates the authority exercised by the Building Code Council, there are other State and local entities which enforce building codes. For example, the State has adopted the Standard Building Codes and the State Engineer has the authority to enforce these on State-owned and leased buildings. The State Fire Marshal has adopted the first eleven chapters of the Standard Building Code and is authorized to enforce them state-wide. Barrier free design regulations have state-wide application in South Carolina. Also, an estimated 130 cities and 17 counties adopted Standard Codes. These jurisdictions are authorized by Section 6-9-30 of the 1976 South Carolina Code of Laws to hire building inspectors to enforce their codes.

- (7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

Another indication of its low level of activity is that no complaints from the public or the building industry were filed with the Building Code Council. The Audit Council examined the Building Code Council's minutes and other records. The Audit Council interviewed the Council's chairman and its members, employees of the Division of General Services, State officials and representatives of related agencies and organizations and found no evidence of public or industry complaints against the Council.

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES.

The Council has complied with the limited authority provided it in Section 6-9-60 of the 1976 South Carolina Code of Laws.

There are no applicable Federal or local statutes governing the Building Code Council. In the four instances since 1972, when local jurisdictions have requested modifications, the Council acted accordingly. However, in another instance, the Chairman acted without the Council's approval to grant modifications to a certain jurisdiction's housing code. This is discussed in detail below.

Chairman Acted Without the Council

The Building Code Council's chairman approved modifications to a municipality's housing code without the Council meeting and approving the action. The municipality proposed 35 revisions to its housing code which the chairman alone approved.

The chairman stated that because the proposed changes were more procedural than technical and did not vary much from the intent of the Standard Housing Code, he did not feel that the issue was important enough to warrant a Council meeting. The chairman said that granting revisions on procedural matters was a "matter of judgement," which he felt was a prerogative of the chairman.

Nevertheless, Section 6-9-60 of the 1976 South Carolina Code of Laws provides that it is a function of the Council to decide the extent to which any jurisdiction may vary from the Standard codes. This

Section does not differentiate between procedural and technical changes in the codes. In addition, the chairman is not given the authority to discriminate between the types of changes, or to grant approvals of modifications without the vote of the Council.

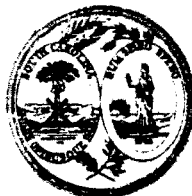
Since the Council did not meet to approve the proposed revisions, the validity of the decision is questionable. This action is a violation of Section 6-9-60 of the 1976 South Carolina Code of Laws which requires any modifications be considered by all members, not just the chairman.

RECOMMENDATION

SHOULD THE GENERAL ASSEMBLY CHOOSE TO
TERMINATE THE BUILDING CODE COUNCIL, IT
SHOULD CONSIDER AMENDING THE CODE TO
ALLOW THE DIRECTOR OF THE OFFICE OF BUILDING
CODES AND REGULATORY SERVICES TO APPROVE
PROCEDURAL CHANGES WITHOUT ASSISTANCE,
BUT REQUIRE HIM TO CONVENE HIS ADVISORY
COMMITTEE FOR ASSISTANCE ON TECHNICAL
CHANGES.

APPENDIX

APPENDIX 1
STATE OF SOUTH CAROLINA
BUDGET AND CONTROL BOARD
DIVISION OF GENERAL SERVICES
300 GERVAIS STREET
COLUMBIA, S.C. 29201
(803) 758-2226



RICHARD W. RILEY, CHAIRMAN
GOVERNOR

GRADY L. PATTERSON, JR.
STATE TREASURER

EARLE E. MORRIS, JR.
COMPTROLLER GENERAL

REMBERT C. DENNIS
CHAIRMAN,
SENATE FINANCE COMMITTEE

TOM G. MANGUM
CHAIRMAN,
HOUSE WAYS AND MEANS COMMITTEE

WILLIAM T. PUTNAM
EXECUTIVE DIRECTOR

JOHN H. LAFITTE, JR.
ASSISTANT DIVISION DIRECTOR

June 27, 1983

Mr. George L. Schroeder, Director
Legislative Audit Council
620 Bankers Trust Tower
Columbia, S.C. 29201

Dear Mr. Schroeder:

Your staff, in reviewing the South Carolina Building Code Council, questioned if the Division would have any objections to new assignments being assigned to the Director of Building Codes and Regulatory Services. The Division would not have a problem with the Director of said section having increased responsibilities in line with the changes as discussed.

The Division, in the past, has provided services for the Building Code Council and will continue to provide services in accordance with our legislative responsibilities.

Sincerely,

John H. Lafitte, Jr.
Assistant Division Director

cc: Tony R. Ellis, Division Director, Division of General Services

APPENDIX 1 (CONTINUED)

STATE OF SOUTH CAROLINA
BUDGET AND CONTROL BOARD
DIVISION OF GENERAL SERVICES

300 GERRAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
(803) 758-3150



RICHARD W. RILEY, CHAIRMAN
GOVERNOR

GRADY L. PATTERSON, JR.
STATE TREASURER

EARLE E. MORRIS, JR.
COMPTROLLER GENERAL

REMBERT C. DENNIS
CHAIRMAN,
SENATE FINANCE COMMITTEE

TOM G. MANGUM
CHAIRMAN,
HOUSE WAYS AND MEANS COMMITTEE

WILLIAM T. PUTNAM
EXECUTIVE DIRECTOR

TONY ELLIS

July 25, 1983

Mr. George Schroeder, Director
South Carolina Legislative Audit Council
620 Bankers Trust Tower
Columbia, South Carolina 29201

Re: S. C. Building Code Council

Dear Mr. Schroeder:

Pursuant to my conversation with your staff, it is my position that the South Carolina Building Code Council should be terminated as provided by the Sunset Act of 1977. The Council's limited authority has only been used four times since 1972. This authority could easily be assumed by the Director of the Office of Building Codes and Regulatory Services within the Division of General Services of the State Budget and Control Board. This office currently provides the Council with clerical and administrative assistance and is qualified to exercise this authority.

I hope that this is helpful in your study of the Building Code Council. Please feel free to contact me should you need more assistance in this matter.

Sincerely,

Tony R. Ellis
Director

TRE:bs

cc: Mr. John LaFitte
Mr. Rick Howell

BOARD FOR BARRIER FREE DESIGN

TABLE OF CONTENTS

	<u>Page</u>
<u>INTRODUCTION</u> . . . . .	.179
<u>BACKGROUND AND HISTORY</u> . . . . .	.180
<u>SUNSET QUESTIONS AND FINDINGS</u> . . . . .	.182
(1) ECONOMIC IMPACT . . . . .	.182
(2) TERMINATION OF AGENCY . . . . .	.182
(3) ADMINISTRATIVE COSTS . . . . .	.185
(4) ADMINISTRATIVE EFFICIENCY . . . . .	.185
The Board did not Review Plans Prior to Construction . . . . .	.186
The Board Failed to Establish a Waiver Program .	.186
The Board has an Inadequate Inspection Program	.187
(5) PUBLIC PARTICIPATION . . . . .	.191
(6) DUPLICATION OF SERVICES . . . . .	.191
(7) HANDLING OF COMPLAINTS . . . . .	.192
The Board has no Procedure for Handling Complaints . . . . .	.192
(8) COMPLIANCE WITH THE LAW . . . . .	.194
The Board's Regulations Reiterate its Enabling Legislation . . . . .	.194
<u>APPENDICES</u> . . . . .	.196
1 - Statement of Revenues and Expenditures . . . . .	.197
2 - Board's Comments . . . . .	.198

INTRODUCTION

The Legislative Audit Council has determined that the Board for Barrier Free Design should be terminated in accordance with Act 608 of 1978. Sections 10-5-210 through 10-5-320 of the 1976 South Carolina Code of Laws direct the Board to establish and enforce minimum standards and specifications necessary to eliminate architectural barriers for the handicapped.

After examining its operations and procedures, the Council has determined that the Board is not performing its mandate to protect the State's handicapped citizens. Under the Sunset Law, a board should be continued if it is determined to meet a public need. In nine years of existence, the Board has not defined its areas of responsibility, reviewed construction design plans, examined waivers to construction plans or established a competent on-site inspection program.

The Board's authority to protect the handicapped can be assumed by the Director of the Office of Building Codes and Regulatory Services within the Division of General Services of the State Budget and Control Board. This office provides the Board with administrative and clerical assistance and its Director is responsible for the overall administration and policy enforcement for the Building Code Council and the Boards of Manufactured Housing and Pyrotechnic Safety. To assist the Director in his duties, an advisory committee on barrier free design should be established.

BACKGROUND AND HISTORY

Prior to the creation of the Board for Barrier Free Design, handicapped individuals, both physically and those hindered by sight, hearing, coordination, and aging disabilities, were covered by Act 174 of 1963. This Act required buildings and facilities constructed with State, county, or municipal funds be accessible to the handicapped. Accessibility was to be in accordance with standards and specifications contained in the Act. Responsibility for enforcement was divided among the State Educational Finance Commission, the Chief Engineer of the State Budget and Control Board, and local governments.

Act 1163 of 1974 created the Board for Barrier Free Design rescinding Act 174 of 1963. In addition to creating a Board, buildings and facilities required to be assessible to the handicapped was extended to all governmental and publicly used buildings. The Board was an agency of the State Budget and Control Board under the supervision of the Division of General Services. In addition, General Services provides office space, clerical assistance, and other assistance. In 1978, Act 540 made the Board an independent regulatory agency and removed it from General Services' supervision.

The Board consists of six members appointed by the Governor to serve four-year terms. By law, two of the members are handicapped persons and one member must be a licensed architect. The three ex-officio members are the Director of Inspection Services of the Division of General Services; the Director of the State Department of Vocational Rehabilitation; and the State Engineer employed by the Budget and Control Board. The duties of the Board as mandated by law are the

establishment, publication, and enforcement of minimum standards and specifications to eliminate architectural barriers. When establishing standards and specifications the Board was to consider using the American National Standard Institute Specifications A117.1 and the Standard Building Code.

Enforcement of the standards was decentralized among the building code inspectors of several counties and municipalities or the chief of fire departments. If there was no building code inspector or fire chief, then the State Fire Marshal had authority. In 1978, Act 540 gave the Fire Marshal's duties to the State Director of Inspection Services in the Budget and Control Board. In addition, waivers to the standards can be granted by local officials. If no official exists, then the State Board has the authority to grant a waiver to a locality.

SUNSET QUESTIONS AND FINDINGS

- (1) DETERMINE THE AMOUNT OF INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAM OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Audit Council could not determine a direct impact on the costs of goods and services incurred by the administration of the Board's functions. The Board may have an indirect effect on the costs of new buildings and renovations when enforcing the elimination of architectural barriers. However, the effect created by barrier free requirements is limited by Section 10-5-270 (b) of the 1976 South Carolina Code of Laws. This Section states that if the incremental construction or renovation costs for implementation of the standards exceeds 7%, a waiver may be granted.

- (2) WHAT ECONOMIC, FISCAL AND OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW?

Should the Board be terminated as a regulatory board and re-established as an advisory committee to the Office of Building Codes and Regulatory Services, there would be no measurable impact. The Board for Barrier Free Design does not operate as an independent regulatory board. It does not have the authority to license, examine, nor does it generate its own revenue. According

to the State's Sunset Law, a regulatory board should continue only if it is necessary to protect the public's health, safety and welfare. In its current capacity, the Board does not adequately protect the public because it has failed to sufficiently enforce minimum standards and specifications.

Section 10-5-250 of the 1976 South Carolina Code of Laws directs that barrier free design shall be complied with in the construction and renovation of all governmental and public buildings and their facilities throughout the State. Further, Section 10-5-300 states that counties and municipalities which employ a building code inspector or chief fire inspector shall have the responsibility to enforce these regulations. Enforcement in the remaining areas of the State shall be the primary responsibility of the Board for Barrier Free Design, with the exception of State-owned or leased buildings and facilities, primary and secondary schools, and health care facilities.

However, the Board has not identified its areas of local enforcement. It does not know where it has primary responsibility to enforce regulations and laws. As a result, the Board can not determine the degree of compliance with barrier free design standards across the State.

In addition, the Board has not adhered to its regulations which require it to review all architectural plans prior to construction (see p. 186) and to examine waivers granted by local jurisdictions (see p. 186). The Board has not adopted any standard policies and procedures for performing an inspection program (see p. 187), and therefore it can not enforce its laws and regulations. Also, it

does not have a format for addressing and resolving complaints (see p. 192).

The Board's authority can be vested with the Division of General Services, which has the technical and administrative expertise to review architectural plans, consider waivers, and to adopt and enforce rules and regulations. Enforcement of this authority should be placed with the Director of Building Codes and Regulatory Services, who is currently responsible for the overall administration and enforcement of the Board's regulations.

The Board has a full-time director's position which should be placed under the supervision of the Director of Building Codes and Regulatory Services. This position should be charged with the responsibility for performing inspections and reviewing plans.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER TERMINATING THE BOARD FOR BARRIER FREE DESIGN AS PROVIDED BY ACT 608 OF 1978. ITS AUTHORITY SHOULD BE TRANSFERRED TO THE DIRECTOR OF THE OFFICE OF BUILDING CODES AND REGULATORY SERVICES WITHIN THE DIVISION OF GENERAL SERVICES. THE BOARD SHOULD BE RECONSTITUTED AS A POLICY ADVISORY COMMITTEE TO THE DIRECTOR. THIS COMMITTEE SHOULD MEET QUARTERLY AND AID WITH THE GRANTING OF WAIVERS OR MODIFICATIONS AND THE ESTABLISHMENT OF RULES AND REGULATIONS FOR BARRIER FREE DESIGN.

THE OFFICE OF BUILDING CODES AND REGULATORY SERVICES SHOULD ESTABLISH AS ITS FIRST PRIORITY DEFINING THE AREAS OF THE STATE WHERE LOCAL OFFICIALS AND BOARDS EXIST TO ENFORCE AND GRANT WAIVERS FOR BARRIER FREE DESIGN.

- (3) DETERMINE THE OVERALL COST, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

The Board for Barrier Free Design did not generate revenue but received appropriations from the General Fund. Before 1979, the Board received its funds from General Services. From FY 79-80 to FY 82-83, the Board's expenditures ranged between \$23,601 to \$47,477 (see Appendix 1). In 1980, the Board hired a director and a temporary clerical person. Staff salaries and benefits consumed 62% or \$20,898 of the Board's total expenditures in FY 81-82. Per diem for Board members totaled \$1,015, and travel expenses totaled \$6,327 in FY 81-82.

- (4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

As noted in Question 2 (p. 182), the Board neglected to determine its areas of primary responsibility at both the State and local levels. It did not establish an adequate inspection program

to ensure compliance, or a procedure to handle complaints (see p. 192). In addition, regulations to provide for plans review and waiver reports were not adhered to by the Board. These problems are discussed in detail below.

The Board did not Review Plans Prior to Construction

Plans for new buildings or renovations were not reviewed by the Board prior to construction. The Board failed to establish a procedure for plans submission and review to monitor compliance with barrier free design as required by its regulation. Both the Director and Chairman of the Board stated that this regulation was not followed.

Since the Board has never determined its areas of responsibility in the State (see Question 2, p. 182), it does not know who should be submitting plans. Because of this, the Board does not know how many buildings are being constructed with or without barrier free designs.

The Board adopted Regulation 19.400.5 (3) requiring that plans for all buildings not exempted from its authority be submitted for review and approval. However, since 1974 only six plans have been reviewed. Because of the Board's lack of initiative, it is not complying with the General Assembly's mandate to ensure handicapped citizens will have access to all buildings.

The Board Failed to Establish a Waiver Program

The Board has failed to identify which localities in the State may grant waivers to barrier free design and to establish a procedure for handling waivers submitted for review. Waivers are granted when compliance can be fulfilled by an acceptable alternative; the cost to

comply exceeds 7% of the total construction costs; occupancy and employment practices would generally exclude the use of a structure by handicapped persons due to hazards and employment requirements; usage or size of structures would have minimal impact in facilitating the handicapped; or the building involved is identified or classified by national or state jurisdictions as an "historic building."

Certain localities may grant waivers to barrier free designs if they have established a Board of Adjustments and Appeals in accordance with the Standard Building Code. All other localities must submit their waivers to the Board. However, the Board has failed to learn which localities have Appeal Boards. In addition, both the Board's Chairman and its Director told the Council that local authorities have not submitted all waiver requests. Also, the Board's Regulation 19.400.5 (4) (E) requires localities to submit waivers in a report format. As of June 1983, the Board has not designed or implemented a report form for the local authorities to use.

Because of its inadequate waiver program, the Board had little oversight of compliance with barrier free design standards. The types and number of waivers which were requested and the action taken could not be monitored. Thus, the State could not properly protect its handicapped citizens.

Board has an Inadequate Inspection Program

The Board has an inadequate inspection program in that its Director does not know whom he is to inspect nor does he have a systematic method for inspections. He will visit the Tax Assessor's Office in each county and obtain building permits issued over the preceeding 18 months.

Using a tax map, the Director then attempts to identify projects under the Board's jurisdiction and to locate them for inspection. If he locates the project and it is still under construction, the Director will inspect. After the inspection, he leaves his completed inspection form with the contractor or architect and does not keep a copy for his files.

Since the Director does not have defined areas of responsibility, his inspections may be duplications of effort. Also the inspections do not ensure that he is covering all projects under the Board's authority. As an example, in 1982 the Director made inspection visits in 39 counties. Of these counties, 16 have building officials who inspect for barrier free design. This is a duplication of effort on the Director's part. While he was performing these inspections, six of the seven counties he failed to visit in 1982 did not have inspectors. These six counties issued 1,683 building permits which were not monitored for barrier free design. The Council was unable to separate these permits between residential dwellings and commercial, industry, and professional projects to determine which ones would be subject to barrier free design.

Section 10-5-250 of the 1976 South Carolina Code of Laws states that the Board shall enforce minimum standards and specifications necessary to eliminate architectural barriers. More specifically, Section 10-5-300 gave the Board primary enforcement authority in counties and municipalities where there is no building code inspector or chief fire inspector.

Since inspections performed by the Board are haphazard, compliance with barrier free design standards is not ensured. In addition, the inspection program is inefficient and ineffective. It duplicates the efforts of local officials and fails to monitor those areas of the State under the Board's authority.

RECOMMENDATIONS

IF THE BOARD IS TERMINATED BY ACT 608 OF 1978, THE DIRECTOR OF THE OFFICE OF BUILDING CODES AND REGULATORY SERVICES, WITH THE ASSISTANCE OF HIS ADVISORY COMMITTEE, SHOULD ADOPT STANDARD PROCEDURES TO REVIEW PLANS IN ORDER TO MONITOR COMPLIANCE WITH BARRIER FREE DESIGN.

THE DIRECTOR OF THE OFFICE OF BUILDING CODES AND REGULATORY SERVICES SHOULD IDENTIFY WHICH AREAS OF THE STATE HAVE LOCAL BOARDS OF ADJUSTMENTS AND APPEALS. ONCE IDENTIFIED, A PROCEDURE FOR REPORTING WAIVERS TO THE DIRECTOR SHOULD BE ESTABLISHED.

THE DIRECTOR SHOULD DESIGN AND IMPLEMENT A REPORTING FORM FOR THE BOARDS OF ADJUSTMENTS AND APPEALS TO USE WHEN THEY GRANT OR DENY WAIVERS AT THE LOCAL LEVEL.

THE DIRECTOR SHOULD IMPLEMENT A PROGRAM FOR PERIODICALLY REVIEWING AND INSPECTING PROJECTS UNDER THE JURISDICTION OF LOCAL BUILDING OFFICIALS AND BOARDS OF ADJUSTMENTS AND APPEALS.

THE POSITION OF DIRECTOR FOR THE BOARD FOR BARRIER FREE DESIGN SHOULD BE CHANGED TO INSPECTOR FOR BARRIER FREE DESIGN UNDER THE OFFICE OF BUILDING CODES AND REGULATORY SERVICES.

THE OFFICE OF BUILDING CODES AND REGULATORY SERVICES SHOULD IMPLEMENT AN INSPECTION PROGRAM BASED ON THE FOLLOWING PROCEDURES:

- (a) IT SHOULD IDENTIFY AREAS IN THE STATE WHERE IT IS RESPONSIBLE FOR ENFORCEMENT.
- (b) A PROCEDURE FOR REPORTING CONSTRUCTION ACTIVITY TO THE OFFICE OF BUILDING CODES AND REGULATORY SERVICES BY LOCAL GOVERNMENTS SHOULD BE IMPLEMENTED.
- (c) PROJECTS WHICH MUST BE REVIEWED FOR BARRIER FREE DESIGN SHOULD HAVE THEIR PLANS SUBMITTED TO THE OFFICE OF BUILDING CODES AND REGULATORY SERVICES FOR REVIEW.
- (d) ONCE REVIEWED AND APPROVED, THE INSPECTOR SHOULD CONDUCT AN ON-SITE INSPECTION OF A PROJECT USING A STANDARD FORM AS CRITERIA FOR MONITORING COMPLIANCE.

(e) AFTER THE INSPECTION, A COPY OF THE INSPECTION REPORT SHOULD BE GIVEN TO THE CONTRACTOR OR ARCHITECT AND THE INSPECTOR SHOULD KEEP THE ORIGINAL FOR USE IN A FOLLOW-UP INSPECTION.

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND IF APPLICABLE, THE INDUSTRY IT REGULATES.

The Board has two public members and it has an active public relations campaign. It has conducted technical and public training/education programs, published an illustrated manual on barrier free design in South Carolina and a brochure for public information, and produced a Public Service Announcement which was aired over television and radio. The Board spent approximately \$42,012 on these programs between 1979 and 1982. During 1983, the Board will conduct a similar public relations campaign.

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS, AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL OR OTHER AGENCY OR ENTITY.

Currently, General Services estimates that 17 counties and 130 municipalities in the State have adopted building codes, appointed building officials and established Boards of Adjustments and Appeals

for the enforcement and handling of waivers. In addition, Federal Rehabilitation Act 504 requires accessibility by the handicapped for buildings which receive Federal funding. The Board is responsible for all areas not covered by local building officials and Boards of Adjustments and Appeals.

- (7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATIONS AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

The Council reviewed the Board's minutes and correspondence files and found problems with the handling of complaints. The Board has no central file or log to record complaints. A more detailed explanation is given in the following finding.

The Board has no Procedure for Handling Complaints

The Board has no written systematic system for recording and handling complaints. It did not adequately maintain complaint documents or records. The Audit Council identified six written and telephone complaints received by the Board between FY 80-81 and FY 81-82. However, the Council could not determine a total number of complaints received because no central file or log exists for complaints.

Section 10-5-250 of the 1976 South Carolina Code of Laws states that it shall be the duty of the Board to "enforce minimum standards and specifications necessary to eliminate architectural barriers to entry to and use of governmental buildings, public buildings, and their

facilities by the aged, disabled, or physically handicapped." Further, Section 10-5-320 states that in cases of noncompliance the Board shall "bring suit in any court of competent jurisdiction to enjoin the use of the buildings or facility" until it is in compliance with the minimum standards and specifications for barrier free design.

Without written procedures and policies for handling complaints, the Board's enforcement abilities are limited. Since the Board did not determine the type or number of complaints received, possible violations of its laws may have gone undetected. In addition, the Board is deprived of a primary source available to evaluate the services rendered by it to the public.

RECOMMENDATION

THE OFFICE OF BUILDING CODES AND REGULATORY SERVICES SHOULD ESTABLISH AND MAINTAIN A CENTRAL FILE AND LOG FOR ALL COMPLAINTS: THE DATE THE COMPLAINT IS RECEIVED, THE ACCUSED, THE NATURE OF THE COMPLAINT, THE COMPLAINANT, ACTION TAKEN, THE FINAL DISPOSITION OF THE BOARD AND DATE.

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES.

The Board for Barrier Free Design has not fully complied with its prescribed duties as explained on p. 182. Section 10-5-250 (1) of the 1976 South Carolina Code of Laws states the Board shall "establish, publish and enforce minimum standards and specifications necessary to eliminate architectural barriers..." The Board has established and published minimum standards, however, it has spent eight years writing rules and regulations which largely reiterate its enabling legislation. This is explained below.

The Board's Regulations Reiterate its Enabling Legislation

Since the Board's first meeting in 1975, its emphasis has been the establishment and publication of rules and regulations. However, the regulations enacted by the Board largely duplicate its enabling legislation. It has enacted six regulations with 42 subsections. Of these subsections, 15 (37%) cite almost word-for-word Sections 10-5-210 through 10-5-320 of the 1976 South Carolina Code of Laws.

Rules and regulations are enacted to enforce the provisions of State law through the establishment of standards and specifications. Rules and regulations aid in the management of a board's affairs and the discharge of its duties.

The Board emphasized promulgating rules and regulations to the detriment of enforcing compliance with the State's barrier free design standards. Rules and regulations are needed to administer a program

however, the Board spent eight years enacting rules which exist in the State Code. This time should have been spent designing and implementing a review and enforcement program for barrier free design.

RECOMMENDATION

THE OFFICE WHICH THE GENERAL ASSEMBLY
ESTABLISHES TO ENFORCE BARRIER FREE DESIGN
SHOULD ADOPT RULES AND REGULATIONS WHICH
DO NOT DUPLICATE THE STATE CODE.

APPENDICES

APPENDIX 1

BOARD FOR BARRIER FREE DESIGN

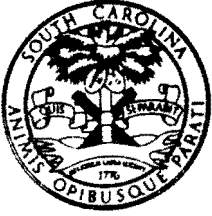
STATEMENT OF REVENUES AND EXPENDITURES

	<u>FY 79-80</u>	<u>FY 80-81</u>	<u>FY 81-82</u>	<u>FY 82-83</u> (Estimated)
<u>Expenditures</u>				
Personal Services	\$12,620	\$12,106	\$21,913	\$22,297
Commercial - Printing, Binding, Advertising	61	6,633	1,605	3,500
Promotional Services	-	-	774	3,515
Telephone & Telegraph	-	308	796	700
State Printing	802	63	125	-
Other Contractual Services	-	-	-	1,500
Supplies	938	703	529	2,700
Postage	1	-	18	700
Rental	-	-	1,195	1,265
Dues & Membership Fees	-	50	65	50
State Insurance	-	81	90	-
Travel	-	2,920	6,327	6,500
Equipment	-	710	382	500
Library Books, Maps & Films	-	-	-	117
Office Equipment Repair	32	-	-	-
In-Service Training	23	-	-	-
Management Consultants	33,000	-	-	-
Photographic Services	-	27	-	-
Registration Fees	-	-	52	500
Temporary Services	-	-	-	3,000
 TOTAL	 <u>\$47,477</u>	 <u>\$23,601</u>	 <u>\$33,871</u>	 <u>\$46,844</u>
 <u>State Appropriation</u>	 <u>\$47,400</u>	 <u>\$48,644</u>	 <u>\$67,190</u>	 <u>\$48,700</u>

Source: Budget and Control Board Budget Document and State Appropriation Act.

SOUTH CAROLINA BOARD FOR BARRIER FREE DESIGN

310 GERVAIS STREET, COLUMBIA, S.C. 29201 • (803) 758-7575



August 23, 1983

Mr. George L. Schroeder, Director
Legislative Audit Council
620 Bankers Trust Tower
Columbia, S.C. 29201

Dear Mr. Schroeder:

The Board for Barrier Free Design has reviewed the Audit Report drafted by the Legislative Audit Council. The consensus of the Board is that, while this report indentifies problem areas and makes some worthwhile recommendations, it does not accurately reflect either the current status or the accomplishments of the Barrier Free Design Program.

When the Legislature set up the Board, it intended for its regulations to be implemented by local officials and by the Division of General Services, specifically the State Fire Marshal, thereby implementing the program without additional personnel or an elaborate enforcement mechanism similar to a statewide building code. The Board was given no staff nor funds to employ anyone.

In 1977, when the Board attempted to promulgate regulations, the Director of the Division of General Services perceived them to be more restrictive than necessary. He then submitted to the State Budget and Control Board, over the Barrier Free Design Board's objections, a second regulation which was approved by the State Budget and Control Board. The Director's action was based on an Attorney General's Opinion to the effect that the Director of the Division of General Services was charged with "supervision" of the Board. The language that gave support to that opinion was removed from the Barrier Free Design statute in 1978 and henceforth there has been no question of the Board's power to autonomously promulgate regulations.

We determined in 1979 that due to reorganization within the State Fire Marshal's Office and the Division of General Services, and other factors, the original concept of implementation was not feasible and that the Board needed a staff to administer properly our regulations and programs. In response to our request, we were authorized funds for a Director in 1980, however, we have not been given additional personnel as we requested. Each year since 1980, we have resubmitted our request for additional staff but our requests have been denied.

The Board has attempted to allocate its limited resources where they would be most effective. Our emphasis has been on the development of a realistic Barrier Free Design Standard as well as education, training, promotion and advocacy. We believe our approach has been the proper one under the circumstances. We are proud of our achievements and of the fact our Board is widely recognized for its leadership in barrier free design.

After being employed, our Director proceeded to establish a working relationship with building officials throughout the state in order to encourage and monitor their Barrier Free Design Programs as well as offer his technical assistance. More recently, the Director has been evaluating areas of the state that do not have building officials in order to determine the scope of our responsibility in those areas and the best way to meet that responsibility.

In addition to the personal visitations to these areas by the Director, the Board has made two written surveys that were mailed to city and county administrators in order to determine where building codes and Boards of Adjustments and Appeals had been established so that we could identify our primary areas of responsibility.

A major concern of the Board is the lack of a feasible procedure for plans to be reviewed in areas that do not have a building code program. The diversity of local building permit programs and other factors pose formidable obstacles to a universal plan-submission procedure. We will continue to strive to find a solution to the problem and to work toward an effective preconstruction plans-review program. The Director made approximately 56 on-site plans reviews in fiscal year 1982-83 during his evaluation and monitoring of construction activity.

The Board has developed and widely distributed a form to be used when individuals request waivers from the Barrier Free Design requirements either from the Board itself or from local Boards of Adjustments and Appeals. The Board has received reports of action taken on waiver requests by local Boards of Adjustments and Appeals by letter and by copies of Board minutes. While we have not established a strict procedure for insuring that the local boards report all requests for waivers, we have no reason to believe nor any actual knowledge that those boards are not following our requirements to report. The Board concurs with the recommendation that a report format should be established and will proceed to do so.

The Board also concurs with the recommendation to establish and maintain a central log for all complaints. We will establish and use a log that will include the date the complaint is received, the accused, the nature of the complaint, the complainant, action taken and the final disposition by the Board and date. While we have not had such a log, the Board has given top priority to handling complaints and has given each complaint due and expeditious consideration.

The Board recognizes that a comprehensive inspection program should be established in order to insure compliance with Barrier Free Design Requirements. However, such a program is far beyond the resources of the Board. Our Director made 179 inspections in fiscal year 1982-83. These inspections served a dual purpose; the monitoring of compliance with the Board's requirements and also served as a mechanism to evaluate what procedure would be the most feasible for the implementation of the Board's requirements statewide.

Since part of the responsibility of the Director is to provide on-site technical assistance to building officials and also to monitor their effectiveness, it is not a duplication of effort for the Director to make an inspection in jurisdictions that have building officials. We will continue to both monitor and assist building officials.

Mr. George L. Schroeder
Page Three
August 23, 1983

It has taken considerable effort and time for the Board for Barrier Free Design to develop Regulations, secure a Director and arrive at where we are today. It is obvious that the Audit Council feels we should have a much more comprehensive regulatory system in place, which can only be set up with considerably more manpower and funds than we have. We believe that the efforts we have put forth have contributed significantly to an environment that is barrier free to the handicapped and that we should continue to control, as an autonomous Board, the Barrier Free Design Program. We feel that a collective body that represents the various interests that are involved can better serve the state rather than putting control in one individual office. The Division of General Services currently is an invaluable ally and part of our program; however, the Division already has responsibility for the program by statute. Since there would be no additional staff or resources provided by transferring the Board's authority to the Division, we can see no gain in this maneuver.

Thank you for the opportunity to review the draft of your report and for the opportunity to respond.

Sincerely,



Bill R. East, Chairman
South Carolina Board for Barrier Free Design

BRE:pf

cc: Members of the South Carolina Board for Barrier Free Design
Tony Ellis, Director, Division of General Services
Edward L. Hiott, III, Director, Barrier Free Design